1986

Title10 Chapter 08: Powers & Duties of all Cities - 1986

Utah Code Annotated

CHAPTER 8

POWERS AND DUTIES OF ALL CITIES

Article 1

General Powers

ARTICLE 1
GENERAL POWERS

10-8-1. Control of finances and property.

The boards of commissioners and city councils of cities shall have the power to control the finances and property of the corporation.

History: R.S. 1898 & C.L. 1907, § 206, subd. 1; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; 1917, ch. 123, § 1; C.L. 1917, §§ 570, 570x1; R.S. 1933 & C. 1943, 15-8-1.

Cross-References. — Accounts of cost of public works, §§ 51-3-1 to 51-3-4.

Accounts of fees, § 21-7-1.

Biennial audits of officers, § 51-2-1 et seq.

Constitutional powers, Utah Const., Art. XI, § 5.

County commissioners, powers conferred upon municipalities not diminished, § 17-5-51.

Employment on public works, citizens preferred, § 34-30-1.

Investment of funds in bonds of federal government permitted, §§ 33-1-1, 33-1-2.

Motor vehicle registration plates, letters "EX" to be displayed, § 41-1-44.1.

Motor vehicles owned by city or town to bear indicia of ownership, §§ 41-7-1, 41-7-2.

Motor vehicles, registration, expiration of registration, § 41-1-49.7.

Motor Vehicle Safety Responsibility Act not applicable to publicly owned vehicles, § 41-12-33.

Municipal Bond Act, § 11-14-1 et seq.

Property exempt from execution, § 78-23-1.

Sales tax exemption, § 59-15-6.

Tax exemption of city property, § 59-2-1.

Uniform Local Sales and Use Tax Law, § 11-9-1 et seq.

Use tax exemption, § 59-16-4.

War memorials, appropriations for, § 71-2-1.

NOTES TO DECISIONS

General powers of city.

The powers of municipal corporations are delegated, and corporations may exercise only the powers granted and in the manner prescribed. Ogden City v. Boreman, 20 Utah 98, 57 P. 843 (1899); Tooele City v. Elkington, 100 Utah 485, 116 P.2d 406 (1941).

As a general rule, the powers of a city are coextensive with its corporate limits. Plutus Mining Co. v. Orme, 76 Utah 286, 289 P. 132 (1930).

The powers of a city are strictly limited to those expressly granted, to those necessarily or fairly implied in or incident to the powers expressly granted, and to those essential to the declared objects and purposes of the corporation. American Fork City v. Robinson, 77 Utah 168, 292 P. 249 (1930); Stevenson v. Salt Lake City Corp., 7 Utah 2d 28, 317 P.2d 597 (1957); Salt Lake City v. Revene, 101 Utah 504, 124 P.2d 537 (1942).

COLLATERAL REFERENCES

Key Numbers. — Municipal Corporations ⇐ 879.

C.J.S. — 64 C.J.S. Municipal Corporations § 1878.

10-8-2. Appropriations — Acquisition and disposal of property.

They may appropriate money for corporate purposes only, and provide for payment of debts and expenses of the corporation; may purchase, receive, hold, sell, lease, convey and dispose of property, real and personal, for the benefit of the city, both within and without its corporate boundaries, improve and protect such property, and may do all other things in relation thereto as natural persons, and may until December 15, 1959, purchase or otherwise

acquire property within their corporate limits from the United States or any of its agencies for the purpose of selling or otherwise disposing of all or part of said property. It shall be deemed a corporate purpose to appropriate money for any purpose which in the judgment of the board of commissioners or city council will provide for the safety, preserve the health, promote the prosperity and improve the morals, peace, order, comfort and convenience of the inhabitants of the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 2; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; 1917, ch. 123, § 1; C.L. 1917, § 570x2; R.S. 1933 & C. 1943, 15-8-2; L. 1957, ch. 18, § 1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Appropriations in aid of armories, § 39-2-9.

Eminent domain, Utah Const., Art. I, Sec. 22; § 78-34-1 et seq.

NOTES TO DECISIONS

Analysis

Borrowing money.

Where money was borrowed by a city for corporate purpose and was profitably and judiciously expended so that the city and its inhabitants derived and would continue to derive substantial benefits therefrom, it was held that, even if the transaction were not in all respects regular and in strict accordance with law, the city would not be permitted under a plea of ultra vires to escape its liability. Muir v. Murray City, 55 Utah 368, 186 P. 433, (1919).

Contracts.

City is authorized to contract with a sewer district for sewage disposal. Bair v. Layton City Corp., 6 Utah 2d 138, 307 P.2d 895 (1957).

Extraterritorial powers.

City had the power to establish electric light plant and transmission line, beyond its boundaries, if necessary, for purpose of supplying light for itself and inhabitants and it had power to purchase water rights for that purpose, and pay in cash or by furnishing power in exchange therefor. Muir v. Murray City, 55 Utah 368, 186 P. 433 (1919).

General welfare clause.

—Construed.

The general welfare clause contained in this section does not authorize a city to provide in a contract that excessive wages shall be exacted by the contractor, or that work shall be done by more expensive methods, with a view to relieving unemployment. Bohn v. Salt Lake City, 79 Utah 121, 8 P.2d 591, 81 A.L.R. 215 (1932).

The general welfare clause in this section does not authorize the buying and selling of gasoline by city for convenience, safety and prosperity of its inhabitants. American Petroleum Co. v. Ogden City, 90 Utah 465, 62 P.2d 557 (1936).

Gift.

City council was without authority to convey vacated street to board of education without consideration since the property owned by a city is held in trust for the use and benefits of its inhabitants and there is no statutory authority to dispose of city property by gift. Sears v. Ogden City, 533 P.2d 118, aff'd on rehearing, 537 P.2d 1029 (Utah 1975).

Interim public transportation system.

This section was a sufficient basis for a city to provide for the general welfare of its inhabitants by establishing an interim system of public transportation until such time as a permanent solution to the problem of public transportation could be found. Garn v. Salt Lake City Corp., 21 Utah 2d 255, 444 P.2d 123 (1968).

Payment of debts.

In a mandamus action to require the city to pay an award of the industrial commission, where the city had no money or funds with which to pay the award and was unable to raise the funds during 1919, the judgment would be held in suspense until the year had expired. Industrial Comm. v. Murray City, 55 Utah 525, 188 P. 274 (1920).

Sale and disposal of property.

Property held in trust for strictly corporate purposes, such as streets, alleys, parks, public buildings, and the like cannot be sold or disposed of so long as it is being used for the purposes for which it was acquired. However, waterworks and lighting plants are held in a proprietary right and, unless prohibited by statute, may be sold, leased, or disposed of by city at any time when, in the judgment of the authorities, it is for the best interests of the city to do so. McDonald v. Price, 45 Utah 464, 146 P. 550 (1915).

Where a city sold a building by publicizing the original proposal, holding a public hearing, adopting a resolution declaring the property obsolete and soliciting bids for its sale, such procedure was proper and the provisions of 10-8-8 would not govern such action by the city. Stone v. Salt Lake City, 11 Utah 2d 196, 356 P.2d 631 (1960), cert. denied, 365 U.S. 860, 81 S. Ct. 827, 5 L. Ed. 2d 823 (1961).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 951; 64 C.J.S. Municipal Corporations § 1887.

Key Numbers. — Municipal Corporations ⇐ 221, 890.

10-8-3. Tax districts.

They may divide the city into districts for the purpose of local taxation as occasion may require.

History: R.S. 1898 & C.L. 1907, § 206, subd. 16; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x16; R.S. 1933 & C. 1943, 15-8-3.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Cemetery maintenance districts, § 8-1-1 et seq.

Municipal improvement districts, § 10-16-1 et seq.

NOTES TO DECISIONS

Extraterritorial taxing power.

Property situated outside the platted and settled portions of a city, and so remote therefrom as to receive no benefit from the expenditure of the taxes for municipal purposes, is not liable to taxation for city purposes. Ellison v. Lindford, 7 Utah 166, 25 P. 744 (1891), appeal dismissed, 155 U.S. 503, 15 S. Ct. 179, 39 L. Ed. 239 (1894).

Land situated one mile away from platted portion of city but within corporate limits was subject to city taxation in view of evidence that landowners had received benefit of expenditures of municipal tax moneys. Cook v. Crandall, 7 Utah 344, 26 P. 927 (1891).

COLLATERAL REFERENCES

C.J.S. — 64 C.J.S. Municipal Corporations § 1978.

Key Numbers. — Municipal Corporations ⇐ 958.

10-8-4. Special taxes and licenses.

They may fix the amount, terms and manner of issuing licenses, and may, consistent with general law, provide the manner and form in which special taxes shall be levied and collected.

History: R.S. 1898 & C.L. 1907, §§ 206, subd. 4, 2696; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x4, 6109; R.S. 1933 & C. 1943, 15-8-4.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Businesses subject to licensing, taxation and regulation, §§ 10-8-39, 10-8-40, 34-29-2.

License fees and taxes, § 10-8-80.

NOTES TO DECISIONS

ANALYSIS

Card rooms.
License and occupation tax distinguished.
Rooming houses and hotels.

Card rooms.

This section does not authorize city to levy license tax upon card rooms, even when considered and construed in connection with §§ 10-8-39 and 10-8-80. Morgan v. Salt Lake City, 78 Utah, 403, 3 P.2d 510 (1931).

License and occupation tax distinguished.

A license tax is based on the state's police power to regulate or prohibit a particular business, and not to raise revenue, while an occupation tax is primarily intended to raise revenue. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Rooming houses and hotels.

This section gives board of commissioners authority to regulate and license rooming houses and hotels. This carries the right to deny a license. Larsen v. Salt Lake City, 44 Utah 437, 141 P. 98 (1914), applying Laws 1911, ch. 120, § 1 (C.L. 1907, § 206, subd. 4).

COLLATERAL REFERENCES

Utah Law Reviews. — Financing Modernized and Unmodernized Local Government in the Age of Aquarius, 1971 Utah L. Rev. 30.

A.L.R. — Authorization, prohibition or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 A.L.R.3d 896.

C.J.S. — 53 C.J.S. Licenses § 10; 62 C.J.S. Municipal Corporations § 168.

Key Numbers. — Licenses ⇐ 5½; Municipal Corporations ⇐ 621.

10-8-5. Erection and care of buildings.

They may erect all needful buildings for the use of the city, and provide for their care.

History: R.S. 1898 & C.L. 1907, § 206, subds. 5, 72; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x5, 570x72; R.S. 1933 & C. 1943, 15-8-5.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Armories, cities may assist in erecting, § 39-2-9.

Blind persons operating vending machines in public buildings, § 55-5-1 et seq.

Employment on public works, § 34-30-1 et seq.

Powers of towns, § 10-13-1.

Public buildings not subject to mechanics' liens, § 38-1-1.

Public works, supervision by registered engineer, § 58-22-18.

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1041.

Key Numbers. — Municipal Corporations ⇐ 268.

10-8-6. Borrowing power — Warrants and bonds.

They may borrow money on the credit of the corporation for corporate purposes in the manner and to the extent allowed by the Constitution and the laws, and issue warrants and bonds therefor in such amounts and forms and on such conditions as they shall determine.

History: R.S. 1898 & C.L. 1907, § 206, subd. 6; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x6; R.S. 1933 & C. 1943, 15-8-6.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Application of moneys borrowed, Utah Const., Art. XIV, Sec. 5.

Bond issues, terms and conditions of bonds, § 11-1-5.

Bonds and warrants, certificate of debt limit, §§ 11-1-1 to 11-1-3.

Debt limitations, Utah Const., Art. XIV, Secs. 3, 4.

Municipal Bond Act, § 11-14-1 et seq.

Release of indebtedness by legislature prohibited, Utah Const., Art. VI, Sec. 27.

Solid waste management facilities, issuance of bonds to acquire, §§ 26-32-3, 26-32-4.

State not to assume debts, Utah Const., Art. XIV, Sec. 6.

NOTES TO DECISIONS

ANALYSIS

"Corporate purposes" construed.
Effect of constitutional limitation on indebtedness.
Power of commissioners.

"Corporate purposes" construed.

Words "corporate purposes" within this section include purchase of water sources, streams, land upon which streams are appropriated, and canals, construction of waterworks and supplying of water for irrigation and other purposes. Dickinson v. Salt Lake City, 57 Utah 530, 195 P. 1110 (1921).

Effect of constitutional limitation on indebtedness.

The inhibition of Utah Const., Art. XIV, § 3, prohibiting a municipality from creating indebtedness in excess of revenue for the current year unless the proposition is submitted to a vote of qualified electors and approved by a majority thereof, only goes to the question of excess amount and not to the time of payment, and if the amount of indebtedness is limited to revenue of current year, there is no objection to providing for payment after year expires. Muir v. Murray City, 55 Utah 368, 186 P. 433 (1919); Dickinson v. Salt Lake City, 57 Utah 530, 195 P. 1110 (1921); Scott v. Salt Lake County, 58 Utah 25, 196 P. 1022 (1921).

Power of commissioners.

Commissioners had power to borrow money and issue bonds, for the payment of which the full faith and credit and taxing power of city was pledged in anticipation of taxes for current year. Dickinson v. Salt Lake City, 57 Utah 530, 195 P. 1110 (1921).

COLLATERAL REFERENCES

Utah Law Review. — Constitutional Restrictions Upon Municipal Indebtedness, 1966 Utah L. Rev. 462.

C.J.S. — 64 C.J.S. Municipal Corporations § 1833, 1893, 1902.

Key Numbers. — Municipal Corporations ⇐ 869, 897, 906, 907.

10-8-7. Refunding bonds — Purpose of issuance.

They may issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or refunding of the same.

History: R.S. 1898 & C.L. 1907, § 206, subd. 7; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x7; R.S. 1933 & C. 1943, 15-8-7.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Refunding bonds, § 11-14-18.

Sinking fund, investment, repurchases, § 11-1-4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations §§ 261 to 269.

C.J.S. — 64 C.J.S. Municipal Corporations § 1910.

Key Numbers. — Municipal Corporations ⇐ 913.

10-8-8. Streets, parks, airports, parking facilities, public grounds and pedestrian malls.

They may lay out, establish, open, alter, widen, narrow, extend, grade, pave or otherwise improve streets, alleys, avenues, boulevards, sidewalks, parks, airports, parking lots or other facilities for the parking of vehicles off streets, public grounds, and pedestrian malls and may vacate the same or parts thereof, by ordinance.

History: R.S. 1898 & C.L. 1907, § 206, subd. 8; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x8; L. 1919, ch. 11, § 1; R.S. 1933 & C. 1943, 15-8-8; L. 1965, ch. 18, § [1]; 1966, (2nd S.S.), ch. 1, § 1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

The history of this section is traced in Tooele City v. Elkington, 100 Utah 485, 116 P.2d 406 (1941), and in Griffin v. Salt Lake City, 111 Utah 94, 176 P.2d 156 (1949).

Cross-References. — Airports generally, § 2-2-1 et seq.

Airport zoning regulations, § 2-4-1 et seq.

Bypass or alternate route through city, hearing, § 27-12-15.

Class C roads, city streets as, § 27-12-23.

Construction contracts for Class B and C roads, requirements for bids, definitions, §§ 27-12-108.1, 27-12-108.2.

Contributions of property to road commission by municipalities, § 27-12-94.

Drainage districts, right to assess benefits to road or street against city or town, § 19-4-10.

Highways within cities and towns, §§ 27-12-86 to 27-12-88.

Limited access highways, §§ 27-12-111 to 27-12-116.

Livestock highways, §§ 27-12-117 to 27-12-120.

Municipal improvement districts, § 10-16-1 et seq.

Pedestrian Mall Law, § 10-15-1 et seq.

Private or special laws laying out, opening, vacating or altering streets or public grounds prohibited, Utah Const., Art. VI, Sec. 26.

State road commission, co-operation with municipalities, § 27-12-14.

Width of right of way, § 27-12-93.

NOTES TO DECISIONS

ANALYSIS

Eminent domain.

Where city brought condemnation proceedings to acquire land for building of previously laid out street, it was properly exercising its power of eminent domain and was not required to adopt an ordinance specifically authorizing the taking. Bountiful v. Swift, 535 P.2d 1236 (Utah 1975).

Estoppel in pais.

In Utah the principle of estoppel in pais is to be applied very narrowly to a city in respect of its right to reopen a street for use as a public thoroughfare and only in cases where the city acted within the ambit of its legal authority but in an irregular way. The principle did not have controlling application where mayor and city commissioners merely agreed verbally to pass an ordinance closing the street but never attempted to pass it. Provo City v. Denver & R.G.W.R.R., 156 F.2d 710 (10th Cir.), cert. denied, 329 U.S., 764, 67 S. Ct. 91 L. Ed. 658 (1946).

Liability of city for negligence.

While cities exercise discretionary power in opening up streets, and regulating use thereof under § 10-8-11, they are bound to exercise due care in maintaining streets and highways within their corporate limits is a reasonably safe condition for travel. Rollow v. Ogden City, 66 Utah 475, 243 P. 791 (1926).

Duty of city to repair or construct streets within its corporate limits is a governmental one, and in the absence of statute no liability devolves on a municipality for defective condition of its streets. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

This section and others do not authorize a recovery from a municipality for the negligence of its servants engaged in repairing or constructing streets, but only where there has been a failure on the part of the municipality to perform its duty to keep its streets free from unsafe, dangerous, defective or obstructed conditions. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

A city was not liable for negligence of its employee in driving truck in connection with repair of one of its streets. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

Off-street parking.

Statute gave city power to condemn land for purposes of off-street parking notwithstanding that property had been used as private parking lot prior to condemnation. Ogden City v. Stephens, 21 Utah 2d 336, 445 P.2d 703 (1968).

Payment for improvements.

The statutory method for paying cost of paving streets was not exclusive, and under this section a city could use general funds or any part thereof for pavement of its streets. Booth v. Midvale City, 55 Utah 220, 184 P. 799 (1919).

Cities may either under their general powers and out of their general funds, or by method of special improvement district proceedings, lay out, establish, open, alter, or otherwise improve streets, and hence, city was held bound under implied contract to pay amounts stated in deeds to it in legal tender as against contention that it could only pay in special improvement bonds. Sidney Stevens Implement Co. v. Ogden City, 83 Utah 578, 33 P.2d 181 (1934).

Public necessity.

Public necessity or expediency for opening of a street within corporate limits in a question for determination by the governing board of a municipality, and its conclusion in that respect, properly expressed by ordinance or resolution, is conclusive. Town of Perry v. Thomas, 82 Utah 159, 22 P.2d 343 (1933).

Public Utilities Act.

The powers granted by this section have never been expressly revoked by repeal, nor were such powers impliedly repealed by the Public Utilities Act. On the contrary, that act

recognizes the power of municipalities to grant franchises. Union Pac. R.R. v. Public Serv. Comm'n, 103 Utah 186, 134 P.2d 469 (1943).

The state legislature, by expressly recognizing the power of municipalities to grant franchises in the Public Utilities Act itself, did not intend to repeal in toto the powers granted to cities and towns to grant franchises. Union Pac. R.R. v. Public Serv. Comm'n, 103 Utah 186, 134 P.2d 469 (1943).

Sale of building.

Where a city sold a building by publicizing the original proposal, holding a public hearing, adopting a resolution declaring the property obsolete and soliciting bids for its sale, such procedure was proper and the provisions of this section would not govern such action by the city. Stone v. Salt Lake City, 11 Utah 2d 196, 356 P.2d 631 (1960), cert. denied, 365 U.S. 860, 81 S. Ct. 827, 5 L. Ed. 2d 823 (1961).

Streets.

— Contract with county.

A city had power to enter into a contract with a county for pavement of a street whereby they would jointly construct the pavement, with the city paying one-third of the cost of improvement and the county the remainder. Booth v. Midvale City, 55 Utah 220, 184 P. 799 (1919).

—Grades.

Cities are authorized to establish grades and improve the streets so as to conform to such grades, when such grades are established for the purpose of making the streets safer and more convenient for public travel. Gray v. Salt City, 44 Utah 204, 138 P. 1177, 1916D Ann. Cas. 1135 (1914).

—Vacation.

On vacation of street by a city, title to the land reverts to owner of the fee, whether the fee is in the city or in an adjoining owner. Knight v. Thomas, 35 Utah 470, 101 P. 383 (1909).

Where a city quitclaimed an alley to a private party in contravention of statute, for a small consideration, and there was no evidence that the property ever was assessed against the grantee or his successors in interest, and the time element was short and there was no replatting or change in the whole neighborhood to benefit of all of the adjacent landowners, there was no ground for estoppel in pais as against the city's right to quiet title as against parties holding under the grantee of the quitclaim deed. Tooele City v. Elkington, 100 Utah 485, 116 P.2d 406 (1941); Hall v. North Ogden City, 109 Utah 304, 166 P.2d 221 (1946); Provo City v. Denver & R.G.W.R.R., 156 F.2d 710 (10th Cir.), cert. denied, 329 U.S. 764, 67 S. Ct. 124 91 L. Ed. 658.

The vacation of the public easement in a street has the effect of relieving the city from further responsibility for maintenance and control. Boskovich v. Midvale City Corp., 121 Utah 445, 243 P.2d 435 (1952).

While the procedure outlined in §§ 57-5-7 and 57-5-8 should normally be followed, a city may by ordinance vacate or abandon streets even in a subdivision if public exigency requires, and if a procedure is followed satisfying statutory requirements and requirements of due process, including reasonable notice, a fair hearing, and consideration of any substantial rights involved. Boskovich v. Midvale City Corp., 121 Utah 445, 243 P.2d 435 (1952).

If the dedicated streets of a subdivision are laid out, and right to the use thereof has arisen, a private easement arises therein which constitutes a vested proprietary interest in the lot owners, which easement survives extinguishment of any coexisting public easement calling for just compensation. Boskovich v. Midvale City Corp., 121 Utah 445, 243 P.2d 435 (1952).

There is an unquestioned departure from the elementary principle that property cannot be taken without due process of law and just compensation, where, without notice, petition, or hearing, a city, by ordinance, closes a portion of a street and alley abutting on school board-owned property on both sides and used for vehicular travel, and thus creates a cul-de-sac as to privately-owned property. Boskovich v. Midvale City Corp., 121 Utah 445, 243 P.2d 435 (1952).

COLLATERAL REFERENCES

Utah Law Review. — Hawkins v. Town of Shaw — Equal Protection and Municipal Services: A Small Leap for Minorities but a Giant Leap for the Commentators, 1971 Utah L. Rev. 397.

C.J.S. — 63 C.J.S. Municipal Corporations §§ 1042 to 1047, 1057, 1058.

A.L.R. — Validity of municipal regulation of aircraft flight paths or altitudes, 36 A.L.R.3d 1314.

Power of municipal corporations to limit exclusive use of designated lanes or streets to buses and taxicabs, 43 A.L.R.3d 1374.

Key Numbers. — Municipal Corporations ⇐ 269, 276.

10-8-8.1. Petition for vacation, narrowing, or change of name of street or alley — Hearing — Ordinance.

On petition by a person owning a lot in a city, praying that a street or alley in the immediate vicinity of such lot may be vacated, narrowed or the name thereof changed, the governing body of such city, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation or narrowing, that it will not be detrimental to the general interest, and that it should be made, may declare by ordinance such street or alley vacated, narrowed or the name thereof changed. The governing body may include in one ordinance the change of name, or the vacation, or the narrowing of more than one street or alley.

History: C. 1953, 10-8-8.1, enacted by L. 1955, ch. 14, § 1.

COLLATERAL REFERENCES

Am. Jur. 2d. — Alteration, vacation, and abandonment, 39 Am. Jur. 2d Highways, Streets, and Bridges § 130 et seq.

C.J.S. — 63 C.J.S. Municipal Corporations §§ 1664, 1665, 1670.

Key Numbers. — Municipal Corporations ⇐ 269(2), (3), 655, 657.

10-8-8.2. Vacation, narrowing, or change of name of alley or street without petition — Ordinance.

When there are two or more streets or alleys of the same name in the city, the governing body, by ordinance and without petition thereof, may change the name of any such street or alley, so as to leave only one to be designated by the original name. When in the opinion of the governing body of the city there is good cause for vacating, or narrowing a street or alley, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance, and without petition therefor, vacate or narrow such street or alley or any part thereof.

History: C. 1953, 10-8-8.2, enacted by L. 1955, ch. 14, § 1.

NOTES TO DECISIONS

Ordinance not required.

Although narrowing of a street must be accomplished by the passing of an ordinance, special improvement district plan which did not actually affect total width of street, but widened the sidewalk, thus narrowing vehicular passage, was valid without authorization of an ordinance. Standard Optical Co. v. Salt Lake City Corp., 535 P.2d 1150 (Utah 1975).

10-8-8.3. Notice required — Exception.

Notice of the intention of the governing body to vacate any street or alley, or part thereof, shall in all cases be given as provided in the next section, except when there is filed with the governing body written consent to such vacation by the owners of the property abutting the part of the street or alley proposed to be vacated, in which case such notice shall not be required.

History: C. 1953, 10-8-8.3, enacted by L. 1955, ch. 14, § 1.

10-8-8.4. Notice — How given.

No street or alley shall be so vacated, unless notice of the pendency of the petition and prayer thereof, and the date of the hearing thereon, if such petition is filed, or of the intention of the governing body of the city to vacate, and the date of the hearing on such question if no petition is filed, be given by publishing in a newspaper published or of general circulation in such city once a week for four consecutive weeks preceding action on such petition or intention, or, where no newspaper is published in the city by posting the notice in three public places therein four consecutive weeks preceding such action, and by mailing such notice to all owners of record of land abutting the street or alley proposed to be vacated addressed to the mailing addresses appearing on the rolls of the county assessor of the county wherein said land is located. Action thereon shall take place within three months after the completion of notice.

History: C. 1953, 10-8-8.4, enacted by L. 1955, ch. 14, § 1.

10-8-8.5. Effect of vacation or narrowing of street or alley.

The action of the governing body vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating ordinance, as a revocation of the acceptance thereof, and the relinquishment of the city's fee therein by the governing body, but the right of way and easements therein, if any, of any lot owner and the franchise rights of any public utility shall not be impaired thereby.

History: C. 1953, 10-8-8.5, enacted by L. 1955, ch. 14, § 1.

NOTES TO DECISIONS

Reversion of underlying fee.

The interest a municipal body acquires in the streets in a platted subdivision is a determinable fee which reverts back to the abutting property owners upon vacation of the municipality's interest. Sears v. Ogden City, 572 P.2d 1359 (Utah 1975).

10-8-9. Bathhouses, playgrounds.

They may establish, maintain and provide for the supervision of bathhouses, public playgrounds, recreation places and swimming pools.

History: R.S. 1898 & C.L. 1907, § 206, subd. 8; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1, C.L. 1917, § 570x8; L. 1919, ch. 11, § 1; R.S. 1933 & C. 1943, 15-8-9.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Establishment of playgrounds generally, § 11-2-1.

Licensing of swimming pools, § 10-8-39.

School buildings as civic centers, § 53-21-1 et seq.

NOTES TO DECISIONS

Liability of city for negligence.

City was not liable for personal injuries sustained as a result of the collapse of a tier of seats erected in a public park since it was acting in a governmental capacity in the erection of the seats. Alder v. Salt Lake City, 64 Utah 568, 231 P. 1102 (1924).

A city operating bathhouses and swimming pools for pecuniary profit or fees similar to those charged by private establishments does so in its corporate, and not in its governmental, capacity and is liable for injury to patrons resulting from negligence in the operation. Burton v. Salt Lake City, 69 Utah 186, 253 P. 443, 51 A.L.R. 364 (1926); Griffin v. Salt Lake City, 111 Utah 94, 176 P.2d 156 (1947).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 202; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 6.

C.J.S. — 63 C.J.S. Municipal Corporations § 1057; 64 C.J.S. Municipal Corporations § 1818.

Key Numbers. — Municipal Corporations ⇐ 276, 721.

10-8-10. Trees.

They may plant, or direct and regulate the planting of, ornamental shade trees in streets, parks and public grounds.

History: R.S. 1898 & C.L. 1907, § 206, subd. 9; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x9; R.S. 1933 & C. 1943, 15-8-10.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Right of action for injuries to trees, §§ 78-38-3, 78-38-4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 210.

C.J.S. — 64 C.J.S. Municipal Corporations § 1693.

Key Numbers. — Municipal Corporations ⇐ 678.

10-8-11. Streets — Encroachments, lighting, sprinkling, cleaning.

They may regulate the use of streets, alleys, avenues, sidewalks, crosswalks, parks and public grounds, prevent and remove obstructions and encroachments thereon, and provide for the lighting, sprinkling and cleaning of the same.

History: R.S. 1898 & C.L. 1907, § 206, subds. 10-12; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x10, 570x11, 570x12; R.S. 1933 & C. 1943, 15-8-11.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Analysis

Advertising signs in parkways.

City ordinance authorizing licensing of advertising signs in parkways between the sidewalk and the curb as permissive "structures," but reserving the right to revoke such licenses, as well as proposed amendment thereto prohibiting such signs as "obstructions," was within city's power granted by this section and §§ 10-8-23, 10-8-26 and 10-8-27. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

License granted owners to erect advertising signs in parkways of public streets, pursuant to a city ordinance, was mere privilege and not a right. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Reservation in city ordinance authorizing licensing of advertising signs in parkways between the sidewalk and the curb of right to revoke such licenses whenever the city commissioners "deem it to be in the best interests" of city was valid as sufficiently establishing standard to guide the commissioners with respect thereto; moreover, the commissioners presumptively acted in good faith in adopting resolution revoking such licenses, and order for removal of all signs in parkways was reasonable. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Encroachments.

— Local powers.

Statutes give broad powers to local governments over streets and sidewalks, especially as to encroachments. Jensen v. Logan City, 96 Utah 53, 83 P.2d 311 (1938), aff'd on rehearing, 96 Utah 522, 88 P.2d 459 (1939).

— Nuisances.

An encroachment on a public street is a public nuisance, though not always abatable at the suit of a private person. Lewis v. Pingree Nat'l Bank, 47 Utah 35, 151 P. 558, 1916 C.L.R.A. 1260 (1915).

Lighting streets.

— Special improvement district.

Lighting of streets constituted public purpose for which city could establish special improvement guaranty fund to secure payment of bonds, levy general tax or make payments from general fund. Wicks v. Salt Lake City, 60 Utah 265, 208 P. 538 (1922).

Moving buildings.

City council had power to provide by ordinance that buildings could not be moved into or on a city street without the written permission of the designated city official; moreover, the ordinance did not violate the due process or equal protection provisions of the U. S. Constitution. Eureka City v. Wilson, 15 Utah 53, 48 P. 41 (1897), aff'd, 173 U.S. 32, 19 S. Ct. 317, 43 L.Ed. 603 (1899).

Parking ordinances.

A city has no power to pass an ordinance declaring the owners of vehicles prima facie responsible for the illegal parking of their vehicles. Nasfell v. Ogden City, 122 Utah 344, 249 P.2d 507 (1952).

Private use of streets.

The right of a city to permit an abutter to encroach upon and make a private use of the streets, as, for example, by the construction of a coal chute in and under the sidewalk, stems from this section. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Streets from side to side, including sidewalks and all area between, are primarily for the public use, which is their paramount use. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Repair and construction of streets.

— Liability of city.

The duty of a city to repair or construct streets within its corporate limits is a governmental one, and in absence of statute no liability devolves on municipality for defective condition of its streets. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

City was not liable for negligence of its employee in driving truck in connection with repair of one of its streets. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

This section and others do not authorize recovery from municipality for negligence of its servants in repairing or constructing streets, but only where municipality has failed to keep streets free from unsafe, dangerous, defective or obstructed conditions. Niblock v. Salt Lake City, 100 Utah 573, 111 P.2d 800 (1941).

Sidewalks.

It follows from the grant or delegation to cities of control over the streets and sidewalks that a city may authorize an abutter to make a limited use of the sidewalks for the more convenient and beneficial use of the adjacent property. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Sprinkling streets.

— Local assessments.

Salt Lake City did not have the power to impose a local assessment to pay the expense of sprinkling streets. Pettit v. Duke, 10 Utah 311, 37 P. 568 (1894). But see § 10-8-12.

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 87, 88, 202, 277; 59 Am. Jur. 2d Parks, Squares, and Playgrounds § 6.

C.J.S. — 64 C.J.S. Municipal Corporations §§ 1687, 1698, 1699, 1747, 1748, 1823.

A.L.R. — Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purposes, 14 A.L.R.3d 896.

Traffic — power of municipal corporation to limit exclusive use of designated lanes or streets to buses or taxicabs, 43 A.L.R.3d 1374.

Estoppel of municipality as to encroachments upon public streets, 44 A.L.R.3d 257.

Key Numbers. — Municipal Corporations ⇐ 661(1), 673, 696, 721(2), (3).

10-8-12. Sprinkling districts.

They may create sprinkling districts and levy a special tax therefor on the property to be benefited thereby.

History: R.S. 1898 & C.L. 1907, § 206, subd. 12; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x12; R.S. 1933 & C. 1943, 15-8-12.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Common law.
Formerly cities did not have this power. See Woodring v. Straup, 45 Utah 173, 143 P. 592 (1914).

10-8-13. Conduits, drains, etc.

They may regulate the opening and use of streets, alleys, sidewalks, crosswalks and public grounds for the laying of gas or water mains and of conduits and pipes, and the building and repairing of sewers, tunnels, conduits and drains.

History: R.S. 1898 & C.L. 1907, § 206, subd. 13; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x13; R.S. 1933 & C. 1943, 15-8-13.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 574.
C.J.S. — 64 C.J.S. Municipal Corporations § 1726.

Key Numbers. — Municipal Corporations ⇐ 680(4).

10-8-14. Water, sewer, gas, electricity, telephone and public transportation — Service beyond city limits — Retainage escrow.

(1) They may construct, maintain and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telephone lines or public transportation systems, or authorize the construction, maintenance and operation of the same by others, or purchase or lease such works or systems from any person or corporation, and they may sell and deliver the surplus product or service capacity of any such works, not required by the city or its inhabitants, to others beyond the limits of the city.

(2) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telephone lines, or public transportation systems is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

History: R.S. 1898 & C.L. 1907, § 26, subd. 14; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x14; R.S. 1933 & C. 1943, 15-8-14; L. 1969, ch. 28, § 1; 1983, ch. 60, § 2.

Amendment Notes. — The 1983 amendment added Subsection (2).

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Consent of local authorities required, Utah Const., Art. XII, Sec. 8.

Counties, acquisition of water rights, § 17-5-43.

Metropolitan water districts, § 73-8-1 et seq.

Power to furnish services or grant franchises, Utah Const., Art. XI, Sec. 5.

Sale or lease of water to municipalities by water conservancy district, § 73-9-1 et seq.

Solid Waste Management Act, § 26-32-1 et seq.

Water and sewer districts, § 17-6-1 et seq.

NOTES TO DECISIONS

Analysis

City owned plants.

— Public service commission.

A city operating and conducting its electric plant and distributing system is not subject to the control of the public utilities commission. Logan City v. Public Utils. Comm'n, 72 Utah 536, 271 P. 961 (1928); Barnes v. Lehi City, 74 Utah 321, 279 P. 878 (1929).

Distribution of electric power outside city limits.

This section negates the proposition that a city could purposely engage in the distribution of electric power to localities or persons outside its limits except to dispose of a surplus. CP Nat'l Corp. v. Public Serv. Comm'n, 638 P.2d 519 (Utah 1981).

Extension of water mains.

Mandamus will not lie to compel town authorities to extend water mains to the plaintiff's residence, regardless of the distance or the size of the pipes necessary for the service; for unless the town authorities are shown to have failed to exercise judgment or discretion, such that refusal to extend the water system would be unreasonable, their decision is final. Rose v. Plymouth Town, 110 Utah 358, 173 P.2d 285 (1946).

Franchising powers.

The power of a city to grant franchises must emanate, if at all, from this section. Mountain States Tel. & Tel. Co. v. Ogden City, 26 Utah 2d 190, 487 P.2d 849 (1971).

Lighting streets.

Lighting of streets constituted public purpose for establishment and maintenance of which city could establish special improvement guaranty fund to secure payment of bonds, levy general tax or make payment from general fund. Wicks v. Salt Lake City, 60 Utah 265, 208 P. 538 (1922).

Mass transportation system.

City had power to acquire and operate mass transportation system under this statute even though proposed transportation system would not be confined to operation on rails. Rich v. Salt Lake City Corp., 20 Utah 2d 339, 437 P.2d 690 (1968).

Pollution control.

Town may prohibit pollution of a stream by animals within ten miles of the intake where water is used for domestic and culinary purposes, even though the town is not the sole owner of the waters of the stream. Town of Ophir v. Ault, 67 Utah 214, 247 P. 290 (1926).

Self-liquidating plants.

Where payment was to be made exclusively from revenues derived from the property, the Granger Act was not required to be followed in issuance of bonds for acquisition of electric light and power system. Utah Power & Light Co. v. Provo City, 94 Utah 203, 74 P.2d 1191 (1937), cert. denied, 305 U.S. 628, 59 S. Ct. 92, 83 L. Ed. 402 (1938).

Surplus water.

— Public service commission.

City is not subject to the jurisdiction of the public service commission in the sale, outside of the city, of surplus water. County Water

System v. Salt Lake City, 3 Utah 2d 46, 278 P.2d 285 (1954).

— Sale.

Town having surplus water may sell it within legal bounds. Hyde Park Town v. Chambers, 99 Utah 118, 104 P.2d 220 (1939).

Tax exemptions.

This section does not authorize cities to enter into contracts exempting a person or corporation from payment of subsequent taxes. Mountain States Tel. & Tel. Co. v. Ogden City, 26 Utah 2d 190, 487 P.2d 849 (1971).

Telephone lines.

City had authority, pursuant to this section, to enact an ordinance authorizing a railroad company to construct tubes under city streets for an intercompany communications system of pneumatic transmission of documents; and company's change from the pneumatic transmission system to a telecommunication system by installing telephone cables in the tubes did not conflict with the authorizing ordinance nor violate the telephone company's exclusive franchise rights to the area since the new system was limited to intercompany communications and had no involvement between the company and the public or between members of the public. Union Pac. R.R. v. Mountain States Tel. & Tel. Co., 594 P.2d 887 (Utah 1979).

COLLATERAL REFERENCES

Utah Law Review. — Comment, Hawkins v. Town of Shaw — Equal Protection and Municipal Services: A Small Leap for Minorities but a Giant Leap for the Commentators, 1971 Utah L. Rev. 397.

CP National Corp. v. Public Service Commission: The Jurisdictional Ambiguity Surrounding Municipal Power Systems, 1982 Utah L. Rev. 913.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 567 et seq.

C.J.S. — 63 C.J.S. Municipal Corporations §§ 1049 to 1052, 1054.

A.L.R. — Liability of water distributor for damage caused by water escaping from main, 20 A.L.R.3d 1294.

Key Numbers. — Municipal Corporations ⇐ 270 to 272, 273½.

10-8-15. Waterworks — Construction — Extraterritorial jurisdiction.

They may construct or authorize the construction of waterworks within or without the city limits, and for the purpose of maintaining and protecting the same from injury and the water from pollution their jurisdiction shall extend over the territory occupied by such works, and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, for fifteen miles above the point from which it is taken and for a distance of three hundred feet on each side of such stream and over highways along such stream or watercourse within said fifteen miles and said three hundred feet; provided, that the jurisdiction of cities of the first class shall be over the entire watershed, except that livestock shall be permitted to graze beyond one thousand feet from any such stream or source; and provided further, that each city of the first class shall provide a highway in and through its corporate limits, and so far as its jurisdiction extends, which shall not be closed to cattle, horses, sheep or hogs driven through any such city, or through any territory adjacent thereto over which such city has jurisdiction, but the board of commissioners of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any territory adjacent thereto over which it has jurisdiction. They may enact all ordinances and regulations necessary to carry the power herein conferred into effect, and are authorized and empowered to enact ordinances preventing pollution or contamination of the

streams or watercourses from which the inhabitants of cities derive their water supply, in whole or in part, for domestic and culinary purposes, and may enact ordinances prohibiting or regulating the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the city has jurisdiction, and provide for permits for the construction and maintenance of the same. In granting such permits they may annex thereto such reasonable conditions and requirements for the protection of the public health as they deem proper, and may, if deemed advisable, require that all closets, privies and urinals along such streams shall be provided with effective septic tanks or other germ-destroying instrumentalities.

History: R.S. 1898 & C.L. 1907, § 206, subd. 15; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; 1917, ch. 123, § 1; C.L. 1917, § 570x15; L. 1923, ch. 11, § 1; R.S. 1933 & C. 1943; 15-8-15.

Compiler's Notes. — "They," as used throughout this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Livestock highways, §§ 27-12-117 to 27-12-120.

Safe Drinking Water Act, local regulations, § 26-12-11.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

This section is constitutional. Thus, a city may adopt ordinances to carry its provisions into effect, provided such ordinances are within the police power and do not amount to an improper taking of property without compensation. Salt Lake City v. Young, 45 Utah 349, 145 P. 1047, 1917D Ann. Cas. 1085 (1915); Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930).

Pollution control.

City may restrain anyone from committing acts upon the watershed area which would contaminate or tend to contaminate the water supply. Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930).

An ordinance denouncing the running at large of animals within the 300-foot area provided for by this section refers to the uncontrolled and unrestrained roving of animals therein. A reasonable use of land within this area is not prohibited. Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930).

Termination of service.

— Due process.

Termination, without hearing, of water service to city residents who failed to pay initial sewer connection fee pursuant to ordinance requiring connection to new sewer system was not a deprivation of property without due process since procedures available to residents insured notice and opportunity to be heard. Rupp v. Grantsville City, 610 P.2d 338 (Utah 1980).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1051.

A.L.R. — Liability of water distributor for damage caused by water escaping from main, 20 A.L.R.3d 1294.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

Key Numbers. — Municipal Corporations ⇦ 271.

10-8-16. Watercourses leading to and within city — Mill privileges.

They may control the water and watercourses leading to the city and regulate and control the watercourses and mill privileges within the city; provided, that the control shall not be exercised to the injury of any right already acquired by actual owners.

History: R.S. 1898 & C.L. 1907, § 206, subd. 17; L. 1911, ch. 120, § 1; 1915 ch. 100, § 1; C.L. 1917, § 570x17; L. 1919, ch. 12, § 1; R.S. 1933 & C. 1943, 15-8-16.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

ANALYSIS

City's use of waters.
Salt Lake City.

City's use of waters.

Right of control exercised by virtue of this section did not give city any proprietary right to use of such waters, since beneficial use is measure of all rights to use of water. Mt. Olivet Cemetery Ass'n v. Salt Lake City, 65 Utah 193, 235 P. 876 (1925).

Salt Lake City.

Much the same powers provided for in this section were given to Salt Lake City by its charter. Levy v. Salt Lake City, 5 Utah 302, 16 P. 598 (1887).

COLLATERAL REFERENCES

A.L.R. — Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

10-8-17. City may act as distributing agent — Collection of operating costs from users.

When the governing body of a city is acting as distributing agent of water, not the property of the corporation, outside of or within its corporate limits, the governing body may annually prior to the commencement of the irrigation season determine and fix the sum deemed necessary to meet the expense of the current year for the purpose of controlling, regulating and distributing such water and constructing and keeping in repair the necessary means for diverting, conveying and distributing the same, and they may collect such sum from the persons entitled to the use of such water, pro rata according to acreage, whether the acreage is situate within or without the corporate boundary of the city; provided, that the funds so derived shall not be appropriated or used for any other purpose, and in the event that a greater sum is collected in any one year than is necessary for said purpose, the excess thereof shall be carried to the account of the year next following and applied to the purpose for which it was collected. Such sum shall be fixed and collected as provided by ordinance, and until collected the same shall be a lien on such water rights and the land irrigated thereby.

History: R.S. 1898 & C.L. 1907, § 206, subd. 17; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x17; L. 1919, ch. 12, § 1; R.S. 1933 & C. 1943, 15-8-17.

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1051.

Key Numbers. — Municipal Corporations ⇐ 271.

10-8-18. Acquisition of water sources — Retainage escrow.

(1) They may construct, purchase or lease and maintain canals, ditches, artesian wells and reservoirs, may appropriate, purchase or lease springs, streams or sources of water supply for the purpose of providing water for irrigation, domestic or other useful purposes; may prevent all waste of water flowing from artesian wells, and if necessary to secure sources of water supply, may purchase or lease land; they may also purchase, acquire or lease stock in canal companies and water companies for the purpose of providing water for the city and the inhabitants thereof.

(2) If any payment on a contract with a private person, firm, or corporation to construct canals, ditches, artesian wells, or reservoirs is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

History: R.S. 1898 & C.L. 1907, § 206, subd. 18; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x18; R.S. 1933 & C. 1943, 15-8-18; L. 1983, ch. 60, § 3.

Amendment Notes. — The 1983 amendment added Subsection (2).

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Eminent domain generally, Utah Const., Art. I, Sec. 22; § 78-34-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Construction.

— Liability of city.

Fact that ditch was beyond city limits did not affect city's liability for damage caused by overflowing water where ditch had been inside city limits when constructed. Chipman v. American Fork City, 54 Utah 93, 179 P. 742 (1919).

Springville.

Under Springville city charter city had authority to use all reasonable means to supply residents with water for all useful and beneficial purposes and to such end to acquire all necessary water rights, by appropriation and use or other lawful ways, and to make and enforce reasonable rules and regulations to control the same. Springville v. Fullmer, 7 Utah 450, 27 P. 577 (1891).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1051.

A.L.R. — Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

Key Numbers. — Municipal Corporations ⇐ 271.

10-8-19. Water supply — Special tax for increasing supply when city acting as distributing agent.

Whenever a city is acting as distributing agent of water, not the property of the corporation, outside of or within the corporate limits of such city, upon written petition of the owners of such water, it may increase the supply of water owned by such persons by any means provided in § 10-8-18, and for that purpose may levy and collect from the owners of such water a tax not exceeding such sum per acre of land owned by such persons as may have been agreed upon and designated in said petition; said tax when so collected to be appropriated exclusively to said purposes, except such part thereof as is necessary to pay the expense of levying and collecting the same. Said tax shall constitute a lien upon the water rights of the persons and the land irrigated thereby, and shall be levied and collected as provided in § 10-8-17.

History: R.S. 1898 & C.L. 1907, § 206, subd. 18; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x18; R.S. 1933 & C. 1943, 15-8-19.

NOTES TO DECISIONS

Constitutionality.

The tax or assessment provided for in this section is not for the support of the city government, but is solely to pay for the control and the distribution of water, and hence this section does not violate Utah Const., Art. XIII, Sec. 10, which prohibits the levy of a tax for governmental purposes upon property not within territorial limits. Pleasant Grove City v. Holman, 59 Utah 242, 202 P. 1096 (1921).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1051.

Key Numbers. — Municipal Corporations ⇐ 271.

10-8-20. Lighting works — Contracts — Retainage escrow.

(1) They may contract with and authorize any person, company or association to construct gas works, electric or other lighting works within the city, and give such persons, company or association the privilege of furnishing light for the public buildings, streets, sidewalks and alleys of the city for any length of time not exceeding three years.

(2) If any payment on a contract with a private person, firm, or corporation to construct gas works, electric or other lighting works within the city is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

History: R.S. 1898 & C.L. 1907, § 206, subd. 19; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x19; R.S. 1933 & C. 1943, 15-8-20; L. 1983, ch. 60, § 4.

Amendment Notes. — The 1983 amendment added Subsection (2).

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Consent of local authorities required, Utah Const., Art. XII, Sec. 8.

NOTES TO DECISIONS

Special improvement fund.

Lighting of streets constituted public purpose for establishment and maintenance of which city could establish special improvement guaranty fund to secure payment of bonds, levy general tax or make payments from general fund. Wicks v. Salt Lake City, 60 Utah 265, 208 P. 538 (1922).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1052.

Key Numbers. — Municipal Corporations ⇐ 272.

10-8-21. Lighting facilities — Sale of gas and electric power — Erection and removal of poles and wires.

They may provide for the lighting of streets and the erection of necessary appliances and lamp posts; may regulate the sale and use of gas, natural gas and electric or other lights and electric power within the city, and regulate the inspection of meters therefor; may prohibit or regulate the erection of telegraph, telephone or electric wire poles in the public grounds, streets or alleys, and the placing of wires thereon; and may require the removal from the public grounds, streets or alleys of any or all such poles, and the placing underground of any or all telegraph, telephone or electric wires.

History: R.S. 1898 & C.L. 1907, § 206, subd. 20; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x20; R.S. 1933 & C. 1943, 15-8-21.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Regulation of rates.

Former statute (C.L. 1907, ch. 120, § 206, subd. 20), providing that city councils had power to provide and charge for lighting of streets, did not alienate state's right to regulate rates for public utility service. City of St. George v. Public Utils. Comm'n, 62 Utah 453, 220 P. 720 (1923).

COLLATERAL REFERENCES

C.J.S. — 63 C.J.S. Municipal Corporations § 1052.

Key Numbers. — Municipal Corporations ⇐ 272.

10-8-22. Water rates.

They may fix the rates to be paid for the use of water furnished by the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 21; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x21; R.S. 1933 & C. 1943, 15-8-22.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

ANALYSIS

Duration of rate fixed.
Reasonableness of rates.
— Judicial review.
— Presumption.

Duration of rate fixed.

Board of commissioners may not by contract restrict or curtail powers of future boards to determine and fix reasonable rates. Fjeldsted v. Ogden City, 83 Utah 278, 28 P.2d 144 (1933).

Reasonableness of rates.

— Judicial review.

Where a city ordinance regulated relations between the city and a water company, the city or any taxpayer could have recourse to the courts to enforce reasonable rates and prevent the company from collecting any other rate; and the company could sue to prevent the city council from enforcing confiscatory rates. Brummitt v. Ogden Waterworks Co., 33 Utah 289, 93 P. 828 (1908).

— Presumption.

Until the contrary is shown, the presumption is that water rates agreed upon between a city and a water company are fair and reasonable. Brummitt v. Ogden Waterworks Co., 33 Utah 289, 93 P. 828 (1908).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 286.

A.L.R. — Power of municipality to charge nonresidents higher fees than residents for use of municipal facilities, 57 A.L.R.3d 998.

Key Numbers. — Waters and Water Courses ⇐ 203(6).

10-8-23. Sidewalks — Regulation and control — Owners required to remove weeds, litter, snow and ice.

They may regulate and control the use of sidewalks and all structures thereunder or thereover; and they may require the owner or occupant, or the agent of any owner or occupant, of property to remove all weeds and noxious vegetation from such property, and in front thereof to the curb line of the street, and to keep the sidewalks in front of such property free from litter, snow, ice and obstructions.

History: R.S. 1898 & C.L. 1907, § 206, subd. 22; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; 1917, ch. 123, § 1; C.L. 1917, § 570x22; R.S. 1933 & C. 1943, 15-8-23.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Cities of second class, § 10-11-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Advertising signs in parkways.

A city ordinance authorizing the licensing of advertising signs in parkways between the sidewalk and the curb as permissive "structures," but reserving the right to revoke such licenses, as well as a proposed amendment thereto prohibiting such signs as "obstructions," was within city's power granted by this section and §§ 10-8-11, 10-8-26 and 10-8-27. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Reservation in a city ordinance authorizing the licensing of advertising signs in parkways between the sidewalk and the curb of right to revoke such licenses whenever the city commissioners "deem it to be to the best interests" of the city was valid as sufficiently establishing a standard to guide the commissioners with respect thereto; moreover, the commissioners presumptively acted in good faith in adopting a resolution revoking such licenses, and an order for removal of all signs in parkways was reasonable. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

A license granted to owners to erect advertising signs in parkways of public streets, pursuant to a city ordinance, was a mere privilege and not a right. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

City's liability for injuries.

— Snow and ice.

City is not liable for injuries from fall caused by natural accumulation of ice and snow on sidewalk in the absence of some other and independent tortious act or omission. West v. Provo City Corp., 27 Utah 2d 306, 495 P.2d 1251 (1972).

— Subrogation rights of city.

Upon being made to respond in damages to a pedestrian injured by tripping on a coal chute trap door in a sidewalk, the city was entitled to recover against the tenant occupying the abutting property who had control of the trap door. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Aside from any possible right of action by a landlord against his tenant, where a tenant of a part of a store building was not in exclusive possession of a sidewalk coal chute, the landlord could not escape liability to the city in suit wherein the city had become subrogated to claim of an injured pedestrian who had tripped on the chute's trap door. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Excavation of and under sidewalk.

City may impose conditions upon abutter in respect to excavations under sidewalks. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Under the grant of power in this section, a city may permit an abutter to make a limited use of a sidewalk to benefit his adjacent property as by construction in and under the sidewalk of a coal chute into his basement. Salt Lake City v. Schubach, 108 Utah 266, 159 P.2d 149, 160 A.L.R. 809 (1945).

Public use of streets and sidewalks.

Streets from side to side, including sidewalks and all area between, are primarily for public use, which is paramount. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1945).

Scope of municipal powers.

Statutes give broad powers to cities over streets and sidewalks, especially as to encroachments. Jensen v. Logan City, 96 Utah 53, 83 P.2d 311 (1938), aff'd on rehearing, 96 Utah 522, 88 P.2d 459 (1939).

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 77 to 79.

C.J.S. — 64 C.J.S. Municipal Corporations §§ 1662, 1704, 1775.

Key Numbers. — Municipal Corporations ⇐ 670, 704.

10-8-24. Litter in streets.

They may regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage or any offensive matter in, and prevent injury or obstruction to, any street, sidewalk, avenue, alley, park or public ground.

History: R.S. 1898 & C.L. 1907, § 206, subd. 23; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x23; R.S. 1933 & C. 1943, 15-8-24.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Burial of dead animals, §§ 4-14-6 to 4-14-10.

NOTES TO DECISIONS

ANALYSIS

Garbage collection and disposal.
Moving buildings.

Garbage collection and disposal.

A city ordinance providing particular means for the collection and disposal of garbage was not discriminatory or arbitrary. Salt Lake City v. Bernhagen, 56 Utah 159, 189 P. 583 (1911).

Moving buildings.

A city council has the power to provide by ordinance that buildings shall not be moved into or on city streets without written permission of a designated city official; moreover, such an ordinance does not violate the due process or equal protection provisions of the U.S. Constitution. Eureka City v. Wilson, 15 Utah 53, 48 P. 41 (1897), aff'd, 173 U.S. 32, 19 S. Ct. 317, 43 L. Ed. 603 (1899).

COLLATERAL REFERENCES

C.J.S. — 64 C.J.S. Municipal Corporations § 1698.

Key Numbers. — Municipal Corporations ⇐ 673.

10-8-25. Crosswalks, curbs and gutters.

They may provide for and regulate the use of crosswalks, curbs and gutters.

History: R.S. 1898 & C.L. 1907, § 206, subd. 24; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x24; R.S. 1933 & C. 1943, 15-8-25.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

10-8-26. Signs and advertising material.

They may regulate or prevent the use of streets, sidewalks, public buildings and grounds for signs, signposts, awnings, horse troughs or racks, or for posting handbills or advertisements.

History: R.S. 1898 & C.L. 1907, § 206, subd. 25; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x25; R.S. 1933 & C. 1943, 15-8-26.

Compiler's Notes. "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

ANALYSIS

Advertising signs in parkways.
Use of streets generally.

Advertising signs in parkways.

City ordinance authorizing the licensing of advertising signs in the parkways between the sidewalks and curbs as permissive "structures," but reserving the right to revoke such licenses, as well as a proposed amendment thereto prohibiting such signs as "obstructions," was within the city's power granted by this section and §§ 10-8-11, 10-8-23 and 10-8-27. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

License granted owners to erect advertising signs in parkways of public streets, pursuant to city ordinance, was mere privilege and not a right. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Reservation in a city ordinance authorizing the licensing of advertising signs in the parkways between the sidewalks and curbs of the right to revoke such licenses whenever the city commissioners "deem it to be to the best interests" of the city was valid as sufficiently establishing standard to guide the commissioners with respect thereto, and the commissioners presumptively acted in good faith in adopting a resolution revoking such licenses, and an order for removal of all signs in parkways was reasonable. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Use of streets generally.

Streets from side to side, including sidewalks and all area between, are primarily for public use, which is their paramount use. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

COLLATERAL REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d Advertising § 4.

C.J.S. — 62 C.J.S. Municipal Corporations § 221.

A.L.R. — Billboards and other outdoor advertising signs as civil nuisances, 38 A.L.R.3d 647.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines, 44 A.L.R.3d 1301.

Validity of regulations restricting height of free standing advertising signs, 56 A.L.R.3d 1207.

Validity and construction of ordinance prohibiting roof signs, 76 A.L.R.3d 1162.

Validity and construction of provision prohibiting or regulating advertising sign overhanging street or sidewalk, 80 A.L.R.3d 687.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like, 80 A.L.R.3d 740.

Validity and construction of state or local regulation prohibiting off-premises advertising structures, 81 A.L.R.3d 486.

Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway, 81 A.L.R.3d 564.

Key Numbers. — Municipal Corporations ⇐ 602.

10-8-27. Placards and handbills.

They may regulate or prohibit the exhibition, distribution or carrying of placards or handbills on the streets, public grounds or sidewalks.

History: R.S. 1898 & C.L. 1907, § 206, subd. 26; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x26; R.S. 1933 & C. 1943, 15-8-27.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Advertising signs in parkways.

A city ordinance authorizing the licensing of advertising signs in the parkways between sidewalks and curbs as permissive "structures," but reserving the right to revoke such licenses, as well as a proposed amendment thereto prohibiting such signs as "obstructions," was within the city's power granted by this section and §§ 10-8-11, 10-8-23 and 10-8-26. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

License granted to owners to erect advertising signs in the parkways of public streets, pursuant to a city ordinance, was a mere privilege and not a right. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

Reservation in a city ordinance authorizing the licensing of advertising signs in the parkways between sidewalks and curbs of the right to revoke such licenses whenever the city commissioners "deem it to be to the best interests" of the city was valid as sufficiently establishing a standard to guide the commissioners with respect thereto; moreover, the commissioners presumptively acted in good faith in adopting a resolution revoking such licenses, and an order for removal of all signs in the parkways was reasonable. Stringham v. Salt Lake City, 114 Utah 517, 201 P.2d 758 (1949).

COLLATERAL REFERENCES

C.J.S. — 64 C.J.S. Municipal Corporations § 1687.

Key Numbers. — Municipal Corporations ⇐ 661(1).

10-8-28. Flags and banners.

They may regulate or prevent the flying of flags, banners or signs across the streets or from houses.

History: R.S. 1898 & C.L. 1907, § 206, subd. 27; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x27; R.S. 1933 & C. 1943, 15-8-28.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

C.J.S. — 64 C.J.S. Municipal Corporations § 1687.

Key Numbers. — Municipal Corporations ⇐ 661(1).

10-8-29. Sales and merchandising on streets.

They may regulate merchandising and sales upon the streets, sidewalks and public places.

History: R.S. 1898 & C.L. 1907, § 206, subd. 28; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x28; R.S. 1933 & C. 1943, 15-8-29.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Licensing power.

The power to license is included within the power to regulate. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways § 254.

C.J.S. — 64 C.J.S. Municipal Corporations § 1687.

A.L.R. — Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use of such purpose, 14 A.L.R.3d 896.

Key Numbers. — Municipal Corporations ⇐ 661(1).

10-8-30. Traffic regulations.

They may regulate the movement of traffic on the streets, sidewalks and public places, including the movement of pedestrians as well as of vehicles, and the cars and engines of railroads, street railroads and tramways, and may prevent racing and immoderate driving or riding.

History: R.S. 1898 & C.L. 1907, § 206, subds. 28, 29; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x29; R.S. 1933 & C. 1943, 15-8-30.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Accident reports to local authorities, § 41-6-42.

Driving while intoxicated, powers of local authorities, § 41-6-43.

Pedestrians, local power as to, § 41-6-77.

Reckless driving, powers of local authorities, § 41-6-43.

Speed limits, local authorities may declare, § 41-6-48.

Traffic rules and regulations generally, § 41-6-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Drunken driving.
Interurban electric cars.
Parking ordinances.
Railroad crossings within municipality.
Speeding.
— Negligence per se.

Drunken driving.

City had power to pass ordinance prohibiting driving while intoxicated, notwithstanding statute on the subject. Salt Lake City v. Kusse, 97 Utah 113, 93 P.2d 671 (1938).

Interurban electric cars.

The power to regulate the movement of traffic includes the power to require vehicles to stop; legislature did not intend by § 41-6-1 to exclude from operation of that act vehicles used exclusively upon stationary rails and tracks; nor did it intend by repeal of R.S. 1933, § 57-7-9, to withdraw from local authorities the power to require interurban cars to stop at designated through streets. Thorpe v. Bamberger R.R., 107 Utah 265, 153 P.2d 541 (1944).

Parking ordinances.

City has no power to pass an ordinance declaring owners of vehicles prima facie responsible for the illegal parking of their vehicles. Nasfell v. Ogden City, 122 Utah 344, 249 P.2d 507 (1952).

Railroad crossings within municipality.

Public service commission had jurisdiction of dispute between city and railroad arising out of the closing of "street-railroad" crossing located within city limits. Provo City v. Department of Bus. Regulation, 118 Utah 1, 218 P.2d 675 (1950).

Speeding.

— Negligence per se.

Violation of speed ordinances may constitute negligence per se. Jensen v. Utah Light & Ry. Co., 42 Utah 415, 132 P. 8 (1913).

COLLATERAL REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic § 204 et seq.; 39 Am. Jur. 2d Highways, Streets, and Bridges § 202.

C.J.S. — 64 C.J.S. Municipal Corporations §§ 1687, 1758.

A.L.R. — Motorcyclists: validity of traffic regulations requiring motorcyclists to wear protective headgear, 32 A.L.R.3d 1270.

Power of municipal corporation to limit exclusive use of designated lands or streets to buses and taxicabs, 43 A.L.R.3d 1394.

Key Numbers. — Municipal Corporations ⇐ 662, 703.

10-8-31. Numbering houses and lots.

They may regulate the numbering of houses and lots.

History: R.S. 1898 & C.L. 1907, § 206, subd. 30; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x30; R.S. 1933 & C. 1943, 15-8-31.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

10-8-32. Naming streets and public places.

They may name streets, courts, parks, thoroughfares and other public places and change the names thereof.

History: R.S. 1898 & C.L. 1907, § 206, subd. 31; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x31; R.S. 1933 & C. 1943, 15-8-32.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges § 24.

C.J.S. — 64 C.J.S. Municipal Corporations § 1654.

Key Numbers. — Municipal Corporations ⇐ 651½.

10-8-33. Railroads — Tracks and franchises.

They may permit, regulate or prohibit the locating, constructing or laying of the tracks of any railroad, or tramway in any street, alley or public place; and may by ordinance grant franchises to railroad and street railroad companies, and to union railroad depot companies, to lay, maintain and operate in any street or part or parts of streets or other public places tracks therefor, but such permission shall not be exclusive or for a longer time than one hundred years.

History: R.S. 1898 & C.L. 1907, § 206, subd. 32; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x32; R.S. 1933 & C. 1943, 15-8-33.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Consent of local authorities required, Utah Const., Art. XII, Sec. 8; § 56-1-8.

Gifts to railroads, § 10-7-19.

NOTES TO DECISIONS

ANALYSIS

Franchises.
— Effect of Public Utilities Act.
— Exclusive franchises.
— Scope of power to grant.

Franchises.

— Effect of Public Utilities Act.

The state legislature, by expressly recognizing the power of municipalities to grant franchises in the Public Utilities Act, did not intend to repeal in toto the powers theretofore given to cities and towns to grant franchises, including the powers granted by this section. Union Pac. R.R. v. Public Serv. Comm'n, 103 Utah 186, 134 P.2d 469 (1943).

The powers granted by this section have never been expressly revoked by repeal; nor were such powers impliedly repealed by the Public Utilities Act. On the contrary, that act recognizes the power of municipalities to grant franchises. Union Pac. R.R. v. Public Serv. Comm'n, 103 Utah 186, 134 P.2d 469 (1943).

— Exclusive franchises.

The granting of exclusive franchises was forbidden to cities when Utah was a territory. Henderson v. Ogden City Ry., 7 Utah 199, 26 P. 286 (1891).

This section does not authorize a city council to grant to a railroad exclusive right to occupy and use a street for one hundred years. Knight v. Thomas, 35 Utah 470, 101 P. 383 (1909).

— Scope of power to grant.

Cities and towns are not given a general power to grant franchises. The power given them is to grant franchises for the use of their streets for specific purposes to certain persons, companies or corporations, among which are railroad and street railroad companies. Union Pac. R.R. v. Public Serv. Comm'n, 103 Utah 186, 134 P.2d 469 (1943).

COLLATERAL REFERENCES

Am. Jur. 2d. — 65 Am. Jur. Railroads 2d § 28.

C.J.S. — 74 C.J.S. Railroads § 104; 83 C.J.S. Street Railroads §§ 37, 161.

Key Numbers. — Railroads ⇐ 75(3); Street Railroads ⇐ 24(1), 65, 67.

10-8-34. Change of grade and crossings—Nonuser as grounds for removal.

They may provide for or change the location, grade or crossing of any railroad; and declare a nuisance and take up and remove, or cause to be taken up and removed, the tracks of any railroad or street railway company which shall have been laid upon the streets of the city and which such railway company has failed to operate with cars for public use for a period of nine months after the laying thereof.

History: R.S. 1898 & C.L. 1907, § 206, subd. 33; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x33; R.S. 1933 & C. 1943, 15-8-34.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Grade crossings, regulation, § 54-4-15.

Liability of city for damage to real property resulting from change of grade, § 10-8-89.

Maintenance of streets by railroad companies, §§ 10-7-26, 10-7-27, 10-7-29, 10-7-30.

Removal of railroad tracks, § 10-8-82.

Time for presenting claim for damages against city, § 10-7-77.

NOTES TO DECISIONS

Railroad crossings within municipality.
Public service commission had jurisdiction of dispute between a city and a railroad arising out of the closing of a "street-railroad" crossing located within the city limits. Provo City v. Department of Bus. Regulation, 118 Utah 1, 218 P.2d 675 (1950).

COLLATERAL REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d Railroads § 203.
C.J.S. — 74 C.J.S. Railroads §§ 117, 158; 83 C.J.S. Street Railroads §§ 170, 183.

Key Numbers. — Railroads ⇐ 82(2), 98; Street Railroads ⇐ 76.

10-8-35. Fences, cattle guards and street crossings—Duty of railroads.

They may require railroad companies to fence their respective railroads or any portion of the same, and to construct cattle guards, crossings of streets and public roads, and keep the same in repair within the limits of the corporation.

History: R.S. 1898 & C.L. 1907, § 206, subd. 34; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x34; R.S. 1933 & C. 1943, 15-8-35.
Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Cattle guards at road crossings, § 56-1-13.
Gates, § 10-8-83.
Public service commission power to require fencing, § 56-2-6.

COLLATERAL REFERENCES

Am. Jur. 2d. — 44 Am. Jur. Railroads § 151 et seq.
C.J.S. — 74 C.J.S. Railroads §§ 176-181; 83 C.J.S. Street Railroads § 170.

Key Numbers. — Railroads ⇐ 103; Street Railroads ⇐ 76.

10-8-36. Flagmen—Grade crossings—Drains along tracks.

They may require railroad companies to keep flagmen at railroad crossings of streets, or otherwise provide protection against injury to persons or property; may compel railroad and street railroad companies to raise or lower their tracks to conform to any grade which at any time may be established by the city, so that such tracks may be crossed at any place on any street, alley or highway; may compel railway companies to make and keep open, and keep in repair, ditches, drains, sewers and culverts along and under their tracks, so that the natural or artificial drainage of adjacent property shall not be impaired.

History: R.S. 1898 & C.L. 1907, § 206, subd. 35; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x35; R.S. 1933 & C. 1943, 15-8-36.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d Railroads § 201 et seq.
C.J.S. — 74 C.J.S. Railroads §§ 158, 187, 433; 83 C.J.S. Street Railroads § 170.

Key Numbers. — Railroads ⇐ 98, 107, 108, 243; Street Railroads ⇐ 76.

10-8-37. Construction, repair and maintenance of bridges, viaducts and tunnels — Retainage escrow.

(1) They may construct and keep in repair bridges, viaducts and tunnels, and regulate the use thereof.

(2) If any payment on a contract with a private person, firm, or corporation to construct bridges, viaducts, or tunnels is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

History: R.S. 1898 & C.L. 1907, § 206, subd. 36; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x36; R.S. 1933 & C. 1943, 15-8-37; L. 1983, ch. 60, § 5.
Amendment Notes — The 1983 amendment added Subsection (2).

Compiler's Notes. — "They," as used at the beginning of Subsection (1), refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Maintenance.
City which assumed control and ownership of bridge was legally bound to use ordinary diligence to keep it in a reasonably safe condition. Mackay v. Salt Lake City, 29 Utah 247, 81 P. 81 (1905).

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 81 to 83.
C.J.S. — 63 C.J.S. Municipal Corporations § 1044.

Key Numbers. — Municipal Corporations ⇐ 269(2).

10-8-38. Drainage and sewage systems — Construction, regulation and control — Retainage escrow — Mandatory hookup — Charges for use — Collection of charges — Service to tenants — Failure to pay for service — Service outside municipality.

(1) Boards of commissioners, city councils and boards of trustees of cities and towns may construct, reconstruct, maintain and operate, sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools and all systems, equipment and facilities necessary to the proper drainage, sewage and sanitary sewage disposal requirements of the city or town and regulate the construction and use thereof.

If any payment on a contract with a private person, firm, or corporation to construct or reconstruct sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and other drainage and sewage systems is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city, or the board of trustees of the town. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(2) Any city or town may, for the purpose of defraying the cost of construction, reconstruction, maintenance or operation of any sewer system or sewage treatment plant, provide for mandatory hookup where the sewer is available and within 300 feet of any property line with any building used for human occupancy and make a reasonable charge for the use thereof. In order to enforce the mandatory hookup to the sewer where available and the collection of any such charge, any city or town operating a waterworks system may make one charge for the combined use of water and the services of the sewer system, including the services of any sewage treatment plant operated by the city or town and may provide by ordinance that application for service from such combined system shall be made in writing, signed by the owner desiring such service or his authorized agent, in which application such owner shall agree that he will pay for all service furnished such owner according to the rules and regulations enacted in the ordinance of such city or town.

In case an application for furnishing service from such combined systems shall be made by a tenant of the owner, such city or town may require as a condition of granting the same that such application contain an agreement signed by the owner or his duly authorized agent to the effect that in consideration of granting such application the owner will pay for all service furnished such tenant or any other occupant of the premises named in the application in case such tenant or occupant shall fail to pay for the same according to the ordinance of such city or town.

In case any person shall fail to hookup to the sewer where available and in case any applicant shall fail to pay for the service furnished according to the rules and regulations prescribed by the ordinances of such city or town, then the city or town may cause the water to be shut off from such premises and shall not be required to turn the same on again until such person has hooked up to the sewer at his own expense or all arrears for service furnished shall be paid in full.

Cities and towns may sell and deliver from the surplus capacity thereof, services of any such system or facility not required by the municipality or its inhabitants to others beyond the limits of the municipality.

History: R.S. 1898 & C.L. 1907, § 206, subd. 37; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x37; R.S. 1933 & C. 1943, 15-8-38; L. 1947, ch. 18, § 1; 1969, ch. 29, § 1; 1971, ch. 12, § 1; 1983, ch. 60, § 6.

Amendment Notes — The 1983 amendment added the second paragraph of Subsection (1) and inserted the subsection designations.

Cross-References. — Joint use of sewage systems by public owners, contracts, § 11-8-1.

Solid Waste Management Act, § 26-32-1 et seq.

Water and sewers, powers as to, §§ 10-7-4 to 10-7-14.3

Water, sewer or sewage systems, establishment of improvement districts in county, § 17-6-1 et seq.

NOTES TO DECISIONS

Analysis

Connection fees.

In determining relative burden already borne and yet to be borne by newly developed properties to establish a connection fee that is reasonable, factors to be considered are cost of existing capital facilities; means by which those facilities have been financed; extent to which properties being charged new fees have already contributed to cost of existing facilities; extent to which they will contribute to cost of existing capital facilities in future; extent to which they should be credited for providing common facilities that municipality has provided without charge to other properties in its service area; extraordinary costs in serving new property; and time-price differential inherent in fair comparisons of amounts paid at different times. Banberry Dev. Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981).

This section does not prohibit collection by a municipality of a water connection fee from a subdivider for each lot in a subdivision at time subdivision is hooked up to city water system, provided such fee is reasonable; to comply with standard of reasonableness, a municipal fee related to services like water and sewer must not require newly developed properties to bear more than their equitable share of capital costs in relation to benefits conferred; to determine equitable share of capital costs to be borne by newly developed properties, a municipality should determine relative burdens previously borne and yet to be borne by those properties in comparison with other properties in municipality as a whole. Banberry Dev. Corp. v. South Jordan City, 631 P.2d 899 (Utah 1981).

This section empowers a municipality to make a reasonable charge for the use of a sewer system in order that it be self-sustaining; no greater charge is authorized. Patterson v. Alpine City, 663 P.2d 95 (Utah 1983).

Construction.

—Relieving unemployment.

In providing a storm sewer system, city may not, with a view to relieving unemployment, insist that excavation be done by hand labor and an unnecessary minimum wage be paid. Bohn v. Salt Lake City, 79 Utah 121, 8 P.2d 591, 81 A.L.R. 215 (1932).

Governmental functions.

—Drainage systems.

Where artificial drainage system built by city altered the normal runoff of percolating and surface waters, causing unnatural overflow of plaintiff's irrigation ditches and damage to plaintiff's crops, city could be enjoined from further use of the system, but was not liable for damage to land and crops since it built and used the drain in its governmental capacity. Reeder v. Brigham City, 17 Utah 2d 398, 413 P.2d 300 (1966).

—Sewer operation.

The operation of a sewer by a city is a governmental function and a city possesses governmental immunity from liability for damage resulting from sewer stoppage. Cobia v. Roy City, 12 Utah 2d 375, 366 P.2d 986 (1961).

Liability for railroad viaduct.

Railroad company and not city was liable for damages resulting from a viaduct built by railroad at command of city. Cook v. Salt Lake City, 48 Utah 58, 157 P. 643 (1916).

Mandatory sewer connection.

City did not have authority to enact an ordinance requiring mandatory sewer connections of all buildings located on property within 500 feet of an existing sewer line; this section limits city's authority to require mandatory sewer connections to those buildings located on property within 300 feet of an existing sewer

line. Harding v. Alpine City, 656 P.2d 985 (Utah 1982).

City did not have authority to enact an ordinance requiring mandatory sewer connections of all buildings located on property within 500 feet of an existing sewer line for the purpose of defraying sewer construction costs; this section limits city's authority to require mandatory sewer connections to those buildings located on property within 300 feet of an existing sewer line. Harding v. Alpine City, 656 P.2d 985 (Utah 1982).

Scope of city's powers.

A city has a wide discretion in acting under this section. Kiesel v. Ogden City, 8 Utah 237, 30 P. 758, (1892), overruled on other grounds, Cobia v. Roy City, 12 Utah 2d 375, 366 P.2d 986 (1961).

This specific grant of power carries with it such power as is necessarily and fairly implied or incident thereto. Bohn v. Salt Lake City, 79 Utah 121, 8 P.2d 591, 81 A.L.R. 215 (1932).

State water pollution control board.

Maintenance of a sewage disposal system is a proper function of a city and Utah Const. Art. VI, § 29 prohibits state water pollution control board from applying rules interfering with the internal sewer system of a city. State Water Pollution Control Bd. v. Salt Lake City, 6 Utah 2d 247, 311 P.2d 370 (1957).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 569 to 574.

C.J.S. — 63 C.J.S. Municipal Corporations § 1049.

A.L.R. — Right of municipality to refuse services provided by it to resident for failure of resident to pay for other unrelated services, 60 A.L.R.3d 714.

Validity and construction of regulation by municipal corporation fixing sewer-use rates, 61 A.L.R.3d 1236.

Key Numbers. — Municipal Corporations ⇐ 170.

10-8-39. License of certain businesses.

They may license, tax and regulate hawking and peddling, pawnbrokers and loan agencies, employment agencies, auctioneers and auction houses, music halls, theaters, theatrical and other exhibitions, shows and amusements, the business conducted by ticket scalpers, distilleries and breweries, brokers, and keepers of public scales; stages and buses, sight-seeing and touring cars or vehicles, cabs and taxicabs, and solicitors therefor; bathhouses, swimming pools, skating rinks; smelters, crushers, sampling works and mills; hotels, and other public places, boardinghouses, restaurants, eating houses, lodginghouses, laundries, barbershops and beauty shops; hackmen, draymen, and drivers of stages, buses, sight-seeing and touring cars, cabs and taxicabs and other public conveyances, porters, expressmen and draymen and all others pursuing like occupations, and prescribe their compensation; may license, tax and regulate secondhand and junk stores and forbid the owners or persons in charge of such stores from purchasing or receiving any articles whatsoever from minors without the written consent of their guardians or parents; may license, tax and regulate storage houses and warehouses and require bond to the city for the benefit of bailors therein; may license, tax and regulate the business conducted by merchants, wholesalers and retailers, shopkeepers and storekeepers, automobile garages, service and filling stations; butchers, bakeries, laundries, druggists, photographers, assayers, confectioners, billboards, bill posting and the distribution or display of advertising matter.

History: R.S. 1898 & C.L. 1907, § 206, subd. 38; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x38; L. 1931, ch. 9, § 1; R.S. 1933 & C. 1943, 15-8-39.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Boxing contests, § 11-5-1 et seq.

Clubs allowing consumption of liquor on premises, § 11-10-1 et seq.

Counties, licensing businesses for regulation and revenues, § 17-5-27.

Employment offices, license required, § 34-29-1 et seq.

General grant of authority, § 10-8-80.

Insurance companies, license or tax prohibited, § 31-14-4(5).

Pawnbrokers and secondhand dealers, § 11-6-1 et seq.

Power to fix terms and manner of issuance, § 10-8-4.

NOTES TO DECISIONS

Analysis

Barbershops.

Under this section, an ordinance fixing the hours of business for barbershops is invalid. Salt Lake City v. Revene, 101 Utah 504, 124 P.2d 537 (1942).

The rulemaking power given to cities in reference to barbershops does not mean any rule, but such rules reasonably related and designed to protect the health of the public. Salt Lake City v. Revene, 101 Utah 504, 124 P.2d 537 (1942).

"Business" construed.

The term "business" denotes the employment or occupation in which a person is engaged to procure a living. Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931).

Butchers.

A retail meat dealer is included within the word "butchers," and this section, together with §§ 10-8-43 and 10-8-80, justifies an ordinance imposing a license upon such business. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Hotels and rooming houses.

This section confers upon the board of commissioners and city council express authority to regulate and license rooming houses and hotels. The right to license includes the right to refuse a license for cause, and when it is refused, the presumption is that it was for a good and sufficient cause. Larsen v. Salt Lake City, 44 Utah 437, 141 P.98 (1914).

Interstate commerce.

Former provision requiring license to canvass or sell by sample certain goods shipped into state, but permitting the canvassing or selling without license of goods not shipped into state was void. State v. Bayer, 34 Utah 257, 97 P. 129, 19 L.R.A. (n.s.) 297 (1908).

Lawyers.

Under former statute, cities had no power to exact a license fee from lawyers. Ogden City v. Boreman, 20 Utah 98, 57 P. 843 (1899).

This section is not applicable to the business of practicing law, since the power of cities to tax, license and regulate, under this section, is limited to businesses listed therein. Davis v. Ogden City, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208, rehearing denied, 118 Utah 401, 223 P.2d 412 (1950).

Licensing in general.

It is believed that under this section the city councils and the boards of commissioners have

a large discretion as to the person to whom the license may be granted and as to the place of business. Perry v. City Council, 7 Utah 143, 25 P. 739, 11 L.R.A. 446 (1891).

The power given by this section to "regulate" includes the power to license. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Merchants.

City may impose a general merchant's license tax upon one who is engaged in a general merchandising business, including the sale of meats, and impose a further license tax upon such a business. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Motor transport companies.

Under this section, cities are given power with respect to motor transport companies; there, however, is no power to grant or require franchises to use streets. Utah Light & Traction Co. v. Public Serv. Comm'n, 101 Utah 99, 118 P.2d 683 (1941).

Price advertising of eyeglasses.

Ordinance prohibiting price advertising of eyeglasses does not have any basis of relationship to public health and is therefore invalid. Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 702 (1955).

Restaurants and eating houses.

Cities have the power to pass reasonable ordinances regulating restaurants and eating houses. Ogden City v. Leo, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

Ordinance prohibiting maintenance of booths of certain dimensions in restaurants so as to prevent persons of both sexes having no regard for law or good morals from meeting in such places was reasonable. Ogden City v. Leo, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

Neither this section nor Constitution of Utah authorizes municipalities to enact civil rights legislation and there is no common-law duty resting on tavern keeper to serve patrol, thus complaint seeking damages for defendant's refusal to serve food to plaintiff "under either the common law or by statute or valid city ordinance" stated no cause of action. Nance v. Mayflower Tavern, Inc., 106 Utah 517, 150 P.2d 773 (1944).

Rules and regulations.

Where the power "to regulate" a particular calling or business is conferred on a city, it authorizes such city to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary and wholesome in conducting the business in a proper and orderly manner. Salt Lake City v. Revene, 101 Utah 504, 124 P.2d 537 (1942).

The power to regulate business can mean only such regulations as are reasonably and substantially related to the safeguarding of the public health. Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 702 (1955).

Social clubs.

—Restaurant activities.

This section's grant to cities of the power to license and regulate certain activities within its jurisdiction, including restaurants, is a general grant of licensing and regulatory power over certain named activities, but by enacting additional statute giving cities the power to license and regulate social clubs, recreational associations, athletic associations and the like, legislature indicated it did not construe this section as containing such grant, so that city's authority for licensing and regulating the restaurant activities of social club must be found in latter statute. Salt Lake City v. Towne House Athletic Club, 18 Utah 2d 417, 424 P.2d 442 (1967).

Taxicabs.

This section permits a city council to require that taxicab operators providing service within the city to have a certificate of public convenience and necessity, even though their primary areas of service are outside the city limits. Butt v. Salt Lake City Corp., 550 P.2d 202 (Utah 1976).

Telephone instruments.

Under Constitution, as it read originally, and former statutes, cities had the power to levy and collect, for revenue purposes, a reasonable license fee for each telephone instrument, operated and maintained by any person or corporation and used exclusively within the city limits for a local business and for which a rental or a charge was made. Ogden City v. Crossman, 17 Utah 66, 53 P. 985 (1898).

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits § 91 et seq.; 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 471 et seq.; 58 Am. Jur. 2d Occupations, Trades, and Professions § 5.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 168, 229 et seq.

A.L.R. — Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building, 65 A.L.R.3d 1296.

Brokers: suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations, 46 A.L.R.3d 1393.

Validity and construction of statute or ordinances forbidding treatment in health clubs or massage salons by persons of the opposite sex, 51 A.L.R.3d 936.

Validity of municipal ordinances regulating time during which restaurant business may be conducted, 53 A.L.R.3d 942.

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events, 81 A.L.R.3d 655.

Key Numbers. — Municipal Corporations ⇐ 621.

10-8-40. Resorts and amusements.

They may license, tax, regulate and suppress billiard, pool, bagatelle, pigeonhole or any other tables or implements kept or used for similar purpose; also pin alleys or tables, or ball alleys; may also license, tax, regulate, prohibit or suppress dancing halls, dancing resorts, dancing pavilions, and all places or resorts to which persons of opposite sexes may resort for the purpose of dancing or indulging in any other social amusements.

History: R.S. 1898 & C.L. 1907, § 206, subd. 39; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x39; R.S. 1933 & C. 1943, 15-8-40.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Boxing contests and wrestling matches, §§ 11-5-1, 11-5-2.

NOTES TO DECISIONS

ANALYSIS

Bagatelle, pinball, and marble machines.
Billiards and pool.
Card games.

Bagatelle, pinball, and marble machines.

The words "suppress" and "prohibit" as used in this section are not synonymous; thus, a city ordinance prohibiting the use for any purpose of bagatelle, pinball, and marble machines is not authorized, since under this section the cities have only the right to restrict in a reasonable manner the use of these machines. Stevenson v. Salt Lake City Corp., 7 Utah 2d 28, 317 P.2d 597 (1957).

Billiards and pool.

This section, when read in connection with §§ 10-8-81 and 10-8-84, confers power with reference to billiard and pool tables, but does not extend beyond the regulation or suppression of keeping them, and § 10-8-81 does not go farther than the regulation of clubs. Accordingly, an ordinance prohibiting any person from playing at billiards upon any billiard or pool table in any clubroom is invalid, for such power is neither expressly granted nor necessarily implied or incident to any express grant. American Fork City v. Robinson, 77 Utah 168, 292 P. 249 (1930).

Card games.

This section, even when construed with §§ 10-8-39 and 10-8-80, does not authorize a city to levy a license tax upon one maintaining a room, open to the public, in which card games are played. Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931).

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations §§ 168, 245, 263, 287.

Key Numbers. — Municipal Corporations ⇐ 594(6), 621.

10-8-41. Prostitution, lewd or perverted acts, gambling and obscene or lewd publications.

They may suppress and prohibit the keeping of disorderly houses, houses of ill fame or assignation, or houses kept by, maintained for, or resorted to or used by, one or more persons for acts of perversion, lewdness or prostitution within the limits of the city and within three miles of the outer boundaries thereof, and may prohibit resorting thereto for any of the purposes aforesaid; they may also make it unlawful for any person to commit or offer or agree to commit an act of sexual intercourse for hire, lewdness or moral perversion within the city, or for any person to secure, induce, procure, offer or transport to any place within the city any person for the purpose of committing an act of sexual intercourse for hire, lewdness or moral perversion, or for any person to receive or direct or offer or agree to receive or direct any person into any place or building within the city for the purpose of committing an act of sexual intercourse for hire, lewdness or moral perversion, or for any person to aid, abet or participate in the commission of any of the foregoing; and they may also suppress and prohibit gambling houses and gambling, lotteries and all fraudulent devices and practices, and all kinds of gaming, playing at dice or cards, and other games of chance, and the sale, distribution or exhibition of obscene or lewd publications, prints, pictures or illustrations.

History: R.S. 1898 & C.L. 1907, § 206, subd. 40; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x40; R.S. 1933 & C. 1943, 15-8-41; L. 1969, ch. 30, § 1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-801.

Cross-References. — Punishment of prostitutes, § 10-8-51.

NOTES TO DECISIONS

Slot machines.

Slot machines fall within the forms of gambling which a city may suppress under this section. Salt Lake City v. Doran, 42 Utah 401, 131 P. 636 (1913).

COLLATERAL REFERENCES

Utah Law Review. — State Preemption and the Exercise of Municipal General Welfare Powers: A City's Anti-Prostitution Ordinance, 1968 Utah L. Rev. 419.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 441.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 247, 263.

A.L.R. — Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Modern concept of obscenity, 5 A.L.R.3d 1158.

Constitutionality, construction, and application of statutes exempting schemes for benefit of public, religious, or charitable purposes from statutes or constitutional provisions against lotteries or gambling, 42 A.L.R.3d 663.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation—modern cases, 77 A.L.R.3d 519.

Key Numbers. — Municipal Corporations ⇐ 594(5), (6).

10-8-42. Intoxicating liquors — Prohibition on manufacture, sale, possession, etc.

They may prohibit, except as provided by law, any person from knowingly having in his possession any intoxicating liquor, and the manufacture, sale, keeping or storing for sale, offering or exposing for sale, importing, carrying, transporting, advertising, distributing, giving away, exchanging, dispensing or serving of intoxicating liquors.

History: R.S. 1898 & C.L. 1907, § 206, subds. 41, 42; L. 1911, ch. 120, § 1; 1913, ch. 85, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x41; L. 1925, ch. 11, § 1; R.S. 1933 & C. 1943, 15-8-42.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Clubs allowing consumption of liquor on premises, § 11-10-1 et seq.

Alcoholic beverages, § 32A-1-1 et seq.

NOTES TO DECISIONS

State liquor laws.

Apparently boards of commissioners and city councils may exercise the authority granted by this section only in so far as it does not conflict with the "Liquor Control Act" of 1935 (former § 32-1-1 et seq.). This would seem to be the necessary consequence of the words "except as provided by law." See Pleasant Grove City v. Lindsay, 41 Utah 154, 125 P. 389 (1912), applying Laws of 1911.

Generally speaking, municipalities may prohibit and punish the same acts that are prohibited and punished by state law and may impose the same penalties imposed by state law if within the jurisdiction of municipal courts. American Fork City v. Charlier, 43 Utah 231, 134 P. 739 (1913); Tooele City v. Hoffman, 42 Utah 596, 134 P. 558 (1913); American Fork City v. Briggs, 43 Utah 252, 134 P. 747 (1913).

Prior to adoption of "Liquor Control Act," it was allowable for municipalities, under power conferred upon them, to prohibit and regulate sale of intoxicating liquors by ordinance, and impose penalties the same as or different than those imposed by state law. American Fork City v. Charlier, 43 Utah 231, 134 P. 739 (1913); Tooele City v. Hoffman, 42 Utah 596, 134 P. 558 (1913); American Fork City v. Briggs, 43 Utah 252, 134 P. 747 (1913).

The "Liquor Control Act" of 1935 probably repealed by implication all ordinances regulating or prohibiting the sale of intoxicating liquors which were in force when that act took effect, at least in so far as the same were in conflict with that act. See Pleasant Grove City v. Lindsay, 41 Utah 154, 125 P. 389 (1912); Nephi City v. Forrest, 41 Utah 433, 126 P. 332 (1912).

State liquor law did not by implication remove the right of cities to prohibit the sale and use of liquors within city limits. Zamata v. Browning, 51 Utah 400, 170 P. 1057 (1918).

COLLATERAL REFERENCES

Am. Jur. 2d. — 45 Am. Jur. 2d Intoxicating Liquors § 27.

C.J.S. — 48 C.J.S. Intoxicating Liquors § 49.

A.L.R. — Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold, 46 A.L.R.3d 369.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor, 51 A.L.R.3d 1061.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R.3d 1071.

What constitutes "sale" of liquor in violation of statute or ordinance, 89 A.L.R.3d 551.

Key Numbers. — Intoxicating Liquors ⇐ 10(2).

10-8-43. Establishment and regulation of markets — Sale of meats, poultry, etc.

They may establish markets and market houses, and provide for the regulation and use thereof, and provide for the place and the manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and regulate the selling of the same.

History: R.S. 1898 & C.L. 1907, § 206, subds. 43, 44; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x42, 570x43; R.S. 1933 & C. 1943, 15-8-43.

Compiler's Notes. "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Licensing of business generally, § 10-8-39.

Produce dealers' licenses, §§ 4-7-6 to 4-7-8.

NOTES TO DECISIONS

ANALYSIS

Meat dealer licensing.
Milk ordinances.

Meat dealer licensing.

Under this section, the city may impose a license tax upon retail meat dealers. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

Milk ordinances.

A municipality can, by ordinance, provide for the inspection of milk and regulate the sale of it by requiring that a permit to be obtained by persons selling it within the city, notwithstanding the fact that the word "milk" was not expressly included in this section, it being included in term "other provisions." Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

COLLATERAL REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d Markets and Marketing § 7.

C.J.S. — 63 C.J.S. Municipal Corporations § 1056.

Key Numbers. — Municipal Corporations ⇐ 275.

10-8-44. Food stuffs—Regulation and inspection.

They may provide for and regulate the inspection of meats, fruit, poultry, fish, butter, cheese, lard, vegetables, flour, meal and all other provisions, and provide for the inspection, measurement or graduation of any merchandise, manufacture or commodity, and appoint the necessary officers therefor.

History: R.S. 1898 & C.L. 1907, § 206, subds. 45, 46; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x44, 570x45; R.S. 1933 & C. 1943, 15-8-44.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

ANALYSIS

Inspection fees.
Milk inspection.

Inspection fees.

Annual fee of $250 for inspection of oils was not unreasonable, the reasonableness of the fee being largely a question for the law-making body. Salt Lake City v. Bennion Gas & Oil Co., 80 Utah 530, 15 P.2d 648 (1932); Salt Lake City v. Bennion, 80 Utah 539, 15 P.2d 651 (1932).

This section grants to cities direct and express authority to pass inspection ordinances which carries with it as an incident thereto the right to charge a fee for said inspection. Salt Lake City v. Bennion Gas & Oil Co., 80 Utah 530, 15 P.2d 648 (1932); Salt Lake City v. Bennion, 80 Utah 539, 15 P.2d 651 (1932).

Milk inspection.

A municipality can by ordinance provide for the inspection of milk and regulate the sale of it by requiring that a permit be obtained by persons selling it within the city, notwithstanding the fact that the word "milk" was not expressly included in this section, it being included in term "other provisions." Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1919).

COLLATERAL REFERENCES

Am. Jur. 2d. — 35 Am. Jur. 2d Food § 3.
C.J.S. — 36A C.J.S. Food § 9.
A.L.R. — Authorization, prohibition, or regulation by municipality of the sale of merchandise on streets or highways, or their use for such purpose, 14 A.L.R.3d 896.
Key Numbers. — Food ⇐ 2.

10-8-45. Weights and measures—Inspection and sealing.

They may provide for the inspection, sealing and use of proper weights, measures, computing scales, and all weighing and measuring devices indicating the numerical value as well as weight or quantity.

History: R.S. 1898 & C.L. 1907, § 206, subds. 47, 48; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x46, 570x47; R.S. 1933 & C. 1943, 15-8-45.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Weights and measures generally, § 4-9-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d Weights, Measures and Labels § 1 et seq.
C.J.S. — 94 C.J.S. Weights and Measures § 3.
Key Numbers. — Weights and Measures ⇐ 1.

10-8-46. Plumbing—Regulation of construction and repair — Board of examiners.

They may regulate the construction, repair and use of vaults, cisterns, areas, hydrants, pumps, sewers, gutters and plumbing, and provide for a board of examiners to examine into the fitness and qualifications of persons following the plumbing trade, and may prescribe what qualifications are necessary for persons following said trade.

History: R.S. 1898 & C.L. 1907, § 206, subd. 49; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x48; R.S. 1933 & C. 1943, 15-8-46.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Registration of plumbers, § 58-18-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d Occupations, Trades, and Professions § 5.

C.J.S. — 62 C.J.S. Municipal Corporations § 286.

Key Numbers. — Municipal Corporations ⇐ 613.

10-8-47. Intoxication — Fights — Disorderly conduct — Assault and battery — Petit larceny — Riots and disorderly assemblies — Firearms and fireworks — False pretenses and embezzlement — Sale of liquor, narcotics or tobacco to minors — Possession of controlled substances — Treatment of alcoholics and narcotics or drug addicts.

They may prevent intoxication, fighting, quarreling, dog fights, cockfights, price fights, bullfights, and all disorderly conduct and provide against and punish the offenses of assault and battery and petit larceny; they may restrain riots, routs, noises, disturbances or disorderly assemblies in any street, house or place in the city; they may regulate and prevent the discharge of firearms, rockets, powder, fireworks or any other dangerous or combustible material; they may provide against and prevent the offense of obtaining money or property under false pretenses and the offense of embezzling money or property in all cases where the money or property embezzled or obtained under false pretenses does not exceed in value the sum of $100 and may prohibit the sale, giving away or furnishing of intoxicating liquors or narcotics, or of tobacco to any person under twenty-one years of age; cities may, by ordinance, prohibit the possession of controlled substances as defined in the Utah Controlled Substances Act, provided the conduct is not a class A misdemeanor or felony, and provide for treatment of alcoholics, narcotic addicts and other persons who are addicted to the use of drugs or intoxicants such that they substantially lack the capacity to control their use of the drugs or intoxicants, and judicial supervision may be imposed as a means of effecting their rehabilitation.

History: R.S. 1898 & C.L. 1907, § 206, subd. 50; L. 1911, ch. 120, § 1; 1913, ch. 86, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x49; R.S. 1933 & C. 1943, 15-8-47; L. 1967, ch. 22, § 1; 1977, ch. 49, § 1; 1981, ch. 50, § 1.

Amendment Notes. — The 1981 amendment inserted "under false pretenses" near the middle of the section; increased the maximum value for property embezzled from $50 to $100; and made minor changes in phraseology and punctuation.

Utah Controlled Substances Act. — The Utah Controlled Substances Act referred to in this section is codified at § 58-37-1 et seq.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Alcoholic beverages, § 32A-1-1 et seq.

Animal fighting, § 76-5-2.

Assault, § 76-5-102.

Boxing contests, § 11-5-1 et seq.
Drugs and narcotics, Controlled Substances Act, § 58-37-1 et seq.
Explosives, §§ 10-8-56, 76-10-301 et seq.
Fireworks, § 11-3-1 et seq.
Jurisdiction of city courts to enter degrees for treatment of alcoholics and narcotic or drug addicts, § 78-4-14.
Tobacco, sale to and purchase or possession by minors, §§ 76-10-104, 76-10-105.

NOTES TO DECISIONS

ANALYSIS

Controlled substances.
Disorderly conduct.
Intoxicating liquors.
—Liability for providing.

Controlled substances.

This section does not give cities authority to enact ordinances making it unlawful for the owner of an automobile to knowingly and intentionally permit persons to occupy it who possess, use, or distribute marijuana therein. Layton City v. Speth, 578 P.2d 828 (Utah 1978).

Disorderly conduct.

This section does not grant a city authority to define and prohibit as disorderly conduct, conduct or behavior of a kind different from the specifics provided therein. Lark v. Whitehead, 28 Utah 2d 343, 502 P.2d 557 (1972).

Intoxicating Liquors.

—Liability for providing.

Where the manager of a liquor lounge permitted a minor to be on the premises, the doctrine of strict liability under the police power applied, rendering the manager criminally liable. Salt Lake City v. Ronnenburg, 674 P.2d 128 (Utah 1983).

COLLATERAL REFERENCES

Utah Law Review. — Note, The King's Peace: Riot Law in Its Historical Perspective, 1971 Utah L. Rev. 240.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 207.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 131, 134, 246.

A.L.R. — Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor, 51 A.L.R.3d 1061.

Validity of statute or ordinance making it an offense to consume or have alcoholic beverages in open package in motor vehicle, 57 A.L.R.3d 1071.

Larceny as within disorderly conduct statute or ordinance, 71 A.L.R.3d 1156.

Key Numbers. — Municipal Corporations ⇐ 594(1), 596.

10-8-48. Concealed weapons.

They may regulate and prohibit the carrying of concealed weapons.

History: R.S. 1898 & C.L. 1907, § 206, subd. 51; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x50; R.S. 1933 & C. 1943, 15-8-48.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Concealed weapons, § 76-10-501 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d Weapons and Firearms § 4 et seq.

C.J.S. — 94 C.J.S. Weapons § 8.

Key Numbers. — Weapons ⇐ 10.

10-8-49. Vagrants — Arrest — Fine — Putting to work — Municipal lodging.

They may arrest and fine or set to work on the streets or elsewhere all vagrants, mendicants and persons found in the city without visible means of support or some legitimate business, and may establish and maintain municipal lodging and eating houses.

History: R.S. 1898 & C.L. 1907, § 206, subd. 52; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x51; R.S. 1933 & C. 1943, 15-8-49.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d Vagrancy § 1 et seq.
C.J.S. — 91 C.J.S. Vagrancy § 1.
A.L.R. — Validity of vagrancy statutes and ordinances, 25 A.L.R.3d 792.
Validity of loitering statutes and ordinances, 25 A.L.R.3d 836.
Key Numbers. — Vagrancy ⇐ 1.

10-8-50. Disturbing the peace — Public intoxication — Fighting — Obscene language — Disorderly conduct — Lewd behavior — Interference with officers — Trespass.

They may provide for the punishment of any person or persons for: (1) disturbing the peace or good order of the city, (2) disturbing the peace of any person or persons, (3) disturbing any lawful assembly, (4) public intoxication, (5) challenging, encouraging or engaging in fighting, (6) using obscene or profane language in a place or under circumstances which could cause a breach of the peace or good order of the city, (7) engaging in indecent or disorderly conduct, (8) engaging in lewd or lascivious behavior or conduct in the city, and (9) interfering with any city officer in the discharge of his duty. They may provide for the punishment of trespass and such other petty offenses as the board of commissioners or city council may deem proper.

History: R.S. 1898 & C.L. 1907, § 206, subd. 53; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x52; R.S. 1933 & C. 1943, 15-8-50; L. 1973, ch. 11, § 1.

Compiler's Notes. — "They," as used at the beginning of the first and second sentences, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Lewdness, § 76-9-702.
Resisting or obstructing officers, § 76-8-306.
Trespass, § 76-6-206.

NOTES TO DECISIONS

ANALYSIS

Conflict with state law.
—Trespass.
Ordinance criminalizing unreasonable searches and seizures.
Profane language.

Conflict with state law.

—Trespass.

A city ordinance prescribing a greater penalty for trespass than was provided in the state criminal code was invalid; since city had only such powers as were specifically delegated to it and could legislate only insofar as its enactments were not repugnant to the general law. Allgood v. Larson, 545 P.2d 530 (Utah 1976).

Ordinance criminalizing unreasonable searches and seizures.

Ordinance providing that right of people "to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated" and making violation thereof misdemeanor was void for vagueness and uncertainty in failing to define or prescribe standards to determine what acts constituted unreasonable searches or seizures. City of Price v. Jaynes, 113 Utah 89, 191 P.2d 606 (1948).

Profane language.

City ordinance which punished use of abusive or profane language, without also requiring disturbance of the peace and good order, was beyond the powers granted by this section and was not enforceable even in the situation where the language did actually include disturbance of the peace and good order. Salt Lake City v. Davison, 27 Utah 2d 71, 493 P.2d 301 (1972).

City ordinance prohibiting insulting, indecent or obscene language or conduct without requirement that it must also disturb the peace and good order of the city or any lawful assembly was void as exceeding the statutory power granted to cities by this section. Lark v. Whitehead, 28 Utah 2d 343, 502 P.2d 557 (1972).

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations §§ 134, 246.

A.L.R. — Vagueness as invalidating statutes and ordinances dealing with disorderly persons or conduct, 12 A.L.R.3d 1448.

Students: participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense, 32 A.L.R.3d 551.

Key Numbers. — Municipal Corporations ⇐ 596.

10-8-51. Beggars, prostitutes, swindlers — Punishment.

They may provide for the punishment of tramps, street beggars, prostitutes, habitual disturbers of the peace, pickpockets, gamblers and thieves, or persons who practice any game, trick or device with intent to swindle.

History: R.S. 1898 & C.L. 1907, § 206, subd. 54; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x53; R.S. 1933 & C. 1943, 15-8-51.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Utah Law Review. — State Preemption and the Exercise of Municipal General Welfare Powers: A City's Anti-Prostitution Ordinance, 1968 Utah L. Rev. 419.

A.L.R. — Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation—modern cases, 77 A.L.R.3d 519.

Key Numbers. — Municipal Corporations ⇐ 596.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and other Political Subdivisions, § 207.

C.J.S. — 62 C.J.S. Municipal Corporations § 134.

10-8-52. Buildings — Fire limits — Removal and destruction of buildings violating ordinance.

They may define fire limits and prescribe limits within which no building shall be constructed except of brick, stone or other incombustible material, without permission, and may cause the destruction or removal of any building constructed or repaired in violation of any ordinance, and cause all buildings and inclosures which may be in a dangerous state to be put in a safe condition or removed.

History: R.S. 1898 & C.L. 1907, § 206, subd. 55; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x54; R.S. 1933 & C. 1943, 15-8-52.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Lumberyards and combustible materials, prohibition within fire limits, § 10-8-70.

Municipal Planning Enabling Act, § 10-9-19 et seq.

Schoolhouses, building code for, § 53-11-3.

Utah state fire prevention law, § 63-29-1 et seq.

Zoning, § 10-9-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Delegation of power by city council.
School buildings.

Constitutionality.

Building ordinance of such character as is authorized by this section is within police power of state and does not contravene U.S. Const., Amend. XIV, § 1. Eureka City v. Wilson, 15 Utah 67, 48 P. 150, 62 Am. St. R. 904 (1897), aff'd, 173 U.S. 32, 19 S. Ct. 317, 49 L. Ed. 603 (1899).

Delegation of power by city council.

City council may, by ordinance, regulate and restrict granting of permission to erect within fire limits buildings constructed of combustible materials, but cannot delegate to an officer or a committee the power to enact regulations and restrictions respecting erection of such buildings, although it may confer on an officer or a committee the power or discretion to grant permission in accordance with such lawful regulations and restrictions as the council may impose. Eureka City v. Wilson, 15 Utah 67, 48 P. 150, 62 Am. St. R. 904 (1897), aff'd, 173 U.S. 32, 19 S. Ct. 317, 43 L. Ed. 603 (1899).

School buildings.

Former provision did not give cities power to impose building restrictions or regulations upon boards of education in the erection of school buildings, such control being in the boards of education. Salt Lake City v. Board of Educ., 52 Utah 540, 175 P. 654 (1918).

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Buildings § 20.

C.J.S. — 62 C.J.S. Municipal Corporations § 255.

A.L.R. — Duty and liability of owner or occupant of premises to building inspector upon premises in discharge of his duty, 28 A.L.R.3d 891.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-53. Fire escapes — Construction — Building exits — Fire extinguishers.

They may prescribe the manner of constructing stone, brick and other buildings, and the construction and maintenance of fire escapes; may cause all buildings used for public purposes to be provided with sufficient and ample means of exit and entrance, and to be supplied with necessary and appropriate appliances for the extinguishment of fire; may prevent the overcrowding thereof, and regulate the placing and use of seats, scenery, curtains, blinds, screens, or other appliances therein.

History: R.S. 1898 & C.L. 1907, § 206, subd. 56; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x55; R.S. 1933 & C. 1943, 15-8-53.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

School buildings.

Former provision did not give cities the power to impose building restrictions or regulations upon boards of education in the erection of school buildings, such control being in the boards of education. Salt Lake City v. Board of Educ., 52 Utah 540, 175 P. 654 (1918).

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Buildings § 18 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations § 257.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-54. Regulation of construction and condition of chimneys and heating equipment — Disposal of ashes.

They may prevent the dangerous construction and condition of chimneys, fireplaces, stoves, stovepipes, heaters, ovens, furnaces, boilers, and apparatus used in and about buildings and manufactories, and cause the same to be removed or placed in a safe condition; and may regulate and prevent the carrying on of manufacturing likely to cause fires, and may prevent the deposit of ashes in unsafe places.

History: R.S. 1898 & C.L. 1907, § 206, subds. 57, 58; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, §§ 570x56, 570x57; R.S. 1933 & C. 1943, 15-8-54.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 13 Am. Jur. 2d Buildings § 18 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations § 257.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-55. Fire departments — Fire-fighting equipment — Rules and regulations.

They may, except as otherwise provided by law, provide for the organization and support of a fire department, procure fire engines, hooks, ladders, buckets, hose and other apparatus, organize fire engine and hook and ladder companies, prescribe duties, rules and regulations for the government thereof, with such penalty as they may deem proper, and make all necessary appropriations therefor.

History: R.S. 1898 & C.L. 1907, § 206, subd. 59; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x58; R.S. 1933 & C. 1943, 15-8-55; L. 1949, ch. 12, § 1; 1957, ch. 19, § 1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — County fire department, § 17-5-68.

Fire hose, trains and vehicles driving over, prohibited, § 41-6-113.

Fire protection, co-operation with other governmental units, § 11-7-1 et seq.

Fire protection districts, § 17-9-1 et seq.

Standard fire-fighting equipment, duty to purchase, § 11-4-1 et seq.

NOTES TO DECISIONS

Liability for injuries caused by fire department.

A city, in operating a fire department, performs a governmental function and is not liable for injury resulting from the negligent operation of a fire truck in departmental service. Rollow v. Ogden City, 66 Utah 475, 243 P. 791 (1926).

COLLATERAL REFERENCES

Utah Law Review. — Comment, Hawkins v. Town of Shaw — Equal Protection and Municipal Services: A Small Leap for Minorities but a Giant Leap for the Commentators, 1971 Utah L. Rev. 397.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 115.

C.J.S. — 62 C.J.S. Municipal Corporations § 591.

Key Numbers. — Municipal Corporations ⇐ 194.

10-8-56. Storage of combustibles and explosives — Usage of lights — Bonfires.

They may regulate or prevent the storage of gunpowder, tar, pitch, resin, coal, oil, gas, gasoline, benzine, turpentine, nitroglycerine, petroleum or any of the products thereof, and other combustible or explosive substances or materials, and the use of lights in stables, shops and other places, and the building of bonfires.

History: R.S. 1898 & C.L. 1907, § 206, subd. 60; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x59; R.S. 1933 & C. 1943, 15-8-56.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Explosives, § 76-10-301 et seq.

Fireworks, permit for public display, § 11-3-3.

NOTES TO DECISIONS

Negligence per se.

Violation of an ordinance passed in pursuance of this section is negligence per se. Smith v. Mine & Smelter Supply Co., 32 Utah 21, 88 P. 683 (1907).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 452.

C.J.S. — 62 C.J.S. Municipal Corporations § 257.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-57. Inspection of boilers — Licensing of stationary engineers.

They may provide for the inspection and may regulate the use of steam boilers, provide for the examination, regulation and licensing of stationary engineers and others having charge or control of stationary engines, motors, boilers or steam or power generating apparatus, or elevators, within the corporate limits of the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 61; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x60; R.S. 1933 & C. 1943, 15-8-57.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Boiler inspection law, § 35-7-5 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 50 Am. Jur. Steam §§ 2, 3.

C.J.S. — 82 C.J.S. Steam § 3.

Key Numbers. — Steam ⇐ 4.

10-8-58. Jails and workhouses — Establishment and maintenance.

They may establish, erect and maintain city jails, houses of correction and workhouses for the confinement of persons convicted of violating any city ordinances, make rules and regulations for the government of the same, appoint necessary jailers and keepers, and use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners.

History: R.S. 1898 & C.L. 1907, § 206, subd. 62; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x61; R.S. 1933 & C. 1943, 15-8-58.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Detention of child pending hearing, §§ 78-3a-29 to 78-3a-31.

Escape, § 76-8-309.

Extradition, use of local jails, § 77-56-12.

Injuring or destroying jails, felony, § 76-8-418.

Venereal diseases, treatment of city prisoners, § 26-6-40.

NOTES TO DECISIONS

County jails.

—City payment of costs.

Although this section does not expressly state that cities must pay counties for costs of booking, feeding and housing prisoners in county jails, it becomes clear that this was the legislative intent when the section is read in conjunction with other sections. Utah County v. Orem City 699 P.2d 707 (Utah 1985).

COLLATERAL REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d Penal and Correctional Institutions § 3.

C.J.S. — 72 C.J.S. Prisons § 2.

A.L.R. — Religious facilities for prisoners, 12 A.L.R.3d 1276.

Civil liability of officer, charged with keeping jail or prison, for death or injury of prisoner, 41 A.L.R.3d 1021.

Key Numbers. — Prisons ⇐ 1, 3.

10-8-59. Cruelty to animals.

They may prohibit cruelty to animals.

History: R.S. 1898 & C.L. 1907, § 206, subd. 63; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x62; R.S. 1933 & C. 1943, 15-8-59.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Cruelty to animals, § 76-5-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals §§ 27 to 29.

C.J.S. — 62 C.J.S. Municipal Corporations § 217.

Key Numbers. — Municipal Corporations ⇐ 604.

10-8-60. Nuisances.

They may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

History: R.S. 1898 & C.L. 1907, § 206, subd. 64; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x63; R.S. 1933 & C. 1943, 15-8-60.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Judicial Code provisions, § 78-38-1.

Penal Code provisions, § 76-10-801.

NOTES TO DECISIONS

ANALYSIS

Enforcement of nuisance ordinance.
Liquor nuisance.
Obstructions.
Validity of ordinance.

Enforcement of nuisance ordinance.

While a person cannot be imprisoned for violation of nuisance ordinance, imprisonment to enforce collection of fine for such nuisance is proper. Ex parte Smith, 97 Utah 280, 92 P.2d 1098 (1939).

Liquor nuisance.

Under this section city can declare illegal sale of liquor a nuisance, but cannot punish the maintenance of such a common nuisance by both fine and imprisonment, although conviction will be upheld to extent of fine imposed. Tooele City v. Hoffman, 42 Utah 596, 134 P. 558 (1913).

Obstructions.

Obstruction wrongfully placed between abutting property and street so as to prevent access from street to abutting premises in a nuisance for which property owner is entitled to legal or equitable relief. Davis v. Midvale City, 56 Utah 1, 189 P. 74 (1911).

Validity of ordinance.

Ordinance enacted pursuant to this statute, but which in fact did not define what was a nuisance, was invalid as an unlawful delegation of power to city's board of condemnation in that quasijudicial has been conferred upon board without standards or guidelines to govern the board in its determination. Jones v. Logan City Corp., 19 Utah 2d 169, 428 P.2d 160 (1967).

COLLATERAL REFERENCES

Utah Law Review. — Comment, State v. Rabe: No Preseizure Adversary Hearing Required under Nuisance Theory of Obscenity, 1971 Utah L. Rev. 582.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 443 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 279, 281.

A.L.R. — Balance of convenience: modern status of rules as to balance of convenience or social utility as affecting relief from nuisance, 40 A.L.R.3d 601.

Key Numbers. — Municipal Corporations ⇐ 605, 623.

10-8-61. Regulations to prevent contagious diseases — Quarantines — Boards of health — Garbage disposal.

They may make regulations to secure the general health of the city, prevent the introduction of contagious, infectious or malignant diseases into the city, and make quarantine laws and enforce the same within the corporate limits and within twelve miles thereof. They may create a board of health and prescribe the powers and duties of the same. They shall not, however, by any ordinance, contract, rule or regulation, prevent or seek to prevent any person from transporting through the streets or public thoroughfares garbage, kitchen refuse or the by-products of the business of such person or from selling or otherwise disposing of the same, except under such uniform and reasonable regulations as the board of commissioners or city council may by ordinance prescribe for the removal, hauling and disposal of the same, and they shall not grant to any person the exclusive right to collect or transport through the streets or public thoroughfares any garbage, kitchen refuse or by-products, but they may prescribe, by ordinance, that any garbage, kitchen refuse or by-product which may be deemed deleterious to the public health may be taken by the city and burned or otherwise destroyed by it.

History: R.S. 1898 & C.L. 1907, § 206, subd. 65; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x64; L. 1921, ch. 11, § 1; R.S. 1933 & C. 1943, 15-8-61.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Duties of city and town health authorities § 26-6-1.

Excepted from county health regulations, § 17-5-49.

Expense of care of contagious diseases among indigent persons, § 17-5-55.

Local health boards generally, §§ 10-7-3, 26-5-1 et seq.

Local health departments, §§ 10-7-3, 17-5-49, 26-24-1 et seq.

Solid Waste Management Act, § 26-32-1 et seq.

State quarantine regulations, § 26-6-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Garbage collection and disposal.
Milk inspection.
Price advertising of eyeglasses.
Sewage disposal.

Garbage collection and disposal.

An ordinance which provided for a particular means for the collection and disposal of garbage was not discriminatory or arbitrary. Salt Lake City v. Bernhagen, 56 Utah 159, 189 P. 583 (1920).

After this section was amended to permit private persons to dispose of their own garbage and a city passed ordinance authorizing board of health to issue permits to certain persons to haul away garbage, the city was not liable for breach of contract entered into before this section was amended, where the contract provided that the city was to deliver all garbage to a certain person. Retan v. Salt Lake City, 63 Utah 459, 226 P. 1095 (1924).

A city ordinance which prohibited any person or corporation other than city waste removal department from collecting garbage or waste for hire within the city exceeded the city's power under this section, since it was not shown that ordinance was for the promotion of the public health. Parker v. Provo City Corp., 543 P.2d 769 (Utah 1975).

Milk inspection.

Municipalities could, by ordinance, provide for the inspection of milk and regulate the sale of it by requiring a permit to be obtained by persons selling it within city. Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

Price advertising of eyeglasses.

Ordinance prohibiting price advertising of eyeglasses was a limitation on rights guaranteed in § 1 of Art. I of the Utah Constitution which could only be justified if necessary for the health, morals, welfare or some similar important consideration of the public weal. Since the ordinance did not have any relationship to the public health, it was invalid. Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 702 (1955).

Sewage disposal.

A city is authorized to contract with a sewer district for sewage disposal. Bair v. Layton City Corp., 6 Utah 2d 138, 307 P.2d 895 (1957).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, etc. §§ 439, 461, 462.

C.J.S. — 62 C.J.S. Municipal Corporations, §§ 133, 265, 293.

Key Numbers. — Municipal Corporations ⇐ 597, 607.

10-8-62. Cemeteries — Purchase and operation.

They may purchase, hold, and pay for lands within or without the corporate limits for the burial of the dead, and all necessary grounds for hospitals; have and exercise police jurisdiction over those lands, and over any cemetery used by the inhabitants of the city. They may survey, plat, map, fence, ornament, and otherwise improve, manage, and operate public burial and cemetery grounds; convey cemetery lots owned by the city, and pass ordinances for the protection and governing of these grounds consistent with Chapter 5, Title 8. They may contract for the care and improvement of cemeteries and cemetery

lots and for any compensation for the care and improvement; receive deposits for the care of lots and invest the deposits in securities approved by them, and pay the cost of the care from any proceeds from the investment.

History: R.S. 1898 & C.L. 1907, § 206, subd. 66; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; 1917, ch. 7, § 1; C.L. 1917, § 570x65; R.S. 1933 & C. 1943, 15-8-62; L. 1985, ch. 132, § 2.

Amendment Notes. — The 1985 amendment divided the former section into three sentences; substituted "those lands" for "the same" in the first sentence; in the second sentence, inserted "They may" at the beginning of the sentence, deleted "rules and" preceding "ordinances," substituted "these" for "such" preceding "grounds," and added "consistent with Chapter 5, Title 8"; in the third sentence, added "They may" at the beginning of the sentence, deleted "such" preceding "cemeteries," deleted "therein" following "cemetery lots," substituted "and for any compensation for the care and improvement; receive deposits for the care of lots and invest the deposits in securities approved by them, and pay the cost of the care from any proceeds from the investment" for "and for the compensation to be made therefor; receive deposits, under rules as may be provided by ordinance, for the care of such lots and invest the same in securities approved by them, and pay therefrom the cost of such care" and made minor changes in punctuation.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Cemetery maintenance districts, § 8-1-1 et seq.

County cemeteries, § 17-5-56.

Donations for care of cemeteries, § 8-2-1 et seq.

Recording plats and conveyances, § 8-3-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Reasonable regulations.
Restrictions on monuments.

Reasonable regulations.

A city has a right to own, maintain, and regulate cemeteries, but not in an arbitrary or unreasonable manner. Crawford v. City of Manti, 18 Utah 2d 79, 415 P.2d 665 (1966).

Restrictions on monuments.

Cemetery burial rights which were purchased before city passed an ordinance limiting the height of grave markers and monuments were not subject to the restrictions of the ordinance where a monument pattern in a set of family graves had been established, but not completed, prior to the effective date of the ordinance. Crawford v. City of Manti, 18 Utah 2d 79, 415 P.2d 665 (1966).

COLLATERAL REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d Cemeteries § 3.

C.J.S. — 62 C.J.S. Municipal Corporations § 270.

Key Numbers. — Municipal Corporations ⇐ 609.

10-8-63. Burial of dead — Vital statistics.

They may regulate the burial of the dead, consistent with Chapter 5, Title 8, the registration of births and deaths, direct the returning and keeping of bills of mortality, and impose penalties on physicians, sextons, and others for any default therein.

History: R.S. 1898 & C.L. 1907, § 206, subd. 67; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x66; R.S. 1933 & C. 1943, 15-8-63; L. 1985, ch. 132, § 3.

Amendment Notes. — The 1985 amendment substituted "consistent with Chapter 5, Title 8" for "and" near the beginning of the section; and inserted "any" before "default therein" at the end of the section.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 270.

Key Numbers. — Municipal Corporations ⇐ 609.

10-8-64. Livestock at large — Pound — Distraint.

They may regulate or prohibit the running at large, within the limits of the city, of livestock, and all kinds of poultry; establish a pound and appoint a poundkeeper and prescribe his duties, distrain and impound animals running at large, and provide for the sale of the same in the manner provided by law for the sale of estrays and trespassing animals. The proceeds arising from the sale of such animals after the payment of all costs shall go to the city treasurer to be disposed of according to law.

History: R.S. 1898 & C.L. 1907, § 206, subd. 68; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x67; R.S. 1933 & C. 1943, 15-8-64.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Contracts between department of agriculture and cities with animal control officer, § 4-25-2.

Estrays and trespassing animals, § 4-25-1 et seq.

Experimental use of impounded animals, § 26-26-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals § 40 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations § 214.

Key Numbers. — Municipal Corporations ⇐ 604.

10-8-65. Dogs — License and tax — Destruction, sale or other disposal.

They may license, tax, regulate or prohibit the keeping of dogs, and authorize the destruction, sale or other disposal of the same when at large contrary to ordinance.

History: R.S. 1898 & C.L. 1907, § 206, subd. 69; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x68; R.S. 1933 & C. 1943, 15-8-65; L. 1967, ch. 23, § 1.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 4 Am. Jur. 2d Animals § 24.
C.J.S. — 62 C.J.S. Municipal Corporations § 218.

Key Numbers. — Municipal Corporations ⇐ 604.

10-8-66. Offensive businesses — Regulation of management and construction.

They may direct the location and regulate the management and construction of packing houses, dairies, tanneries, canneries, renderies, bone factories, slaughterhouses, butcher shops, soap factories, foundries, breweries, distilleries, livery stables and blacksmith shops in and within one mile of the limits of the corporation.

History: R.S. 1898 & C.L. 1907, § 206, subd. 70; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x69; R.S. 1933 & C. 1943, 15-8-66.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Total prohibition.

City had right to exclude from its corporate limits foundries and other objectionable businesses entirely. Salt Lake City v. Western Foundry & Stove Repair Works, 55 Utah 447, 187 P. 829 (1920).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 467.
C.J.S. — 62 C.J.S. Municipal Corporations §§ 219, 237, 240, 298, 300, 311.

Key Numbers. — Municipal Corporations ⇐ 606, 611.

10-8-67. Pigsties, privies — Prohibiting establishment.

They may prohibit any offensive, unwholesome business or establishment in and within one mile of the limits of the corporation, compel the owner of any pigsty, privy, barn, corral, sewer or other unwholesome or nauseous house or place to cleanse, abate or remove the same, and may regulate the location thereof.

History: R.S. 1898 & C.L. 1907, § 206, subd. 71; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x70; R.S. 1933 & C. 1943, 15-8-67.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

ANALYSIS

Public nuisance.
— Hog ranch.
Total prohibition.

Public nuisance.

— Hog ranch.

Grant of power under this section was sufficient to authorize city to proceed by a suit in equity to enjoin defendants from operating hog ranch. Monroe City v. Arnold, 22 Utah 2d 291, 452 P.2d 321 (1969).

Total prohibition.

City had right to exclude from its corporate limits foundries and other objectionable businesses entirely. Salt Lake City v. Western Foundry & Stove Repair Works, 55 Utah 447, 187 P. 829 (1920).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions §§ 468, 469.

C.J.S. — 62 C.J.S. Municipal Corporations § 279.

Key Numbers. — Municipal Corporations ⇐ 605.

10-8-68. Census.

They may provide for the taking of censuses, but no census shall be taken oftener than once in five years, except as otherwise provided by law.

History: R.S. 1898 & C.L. 1907, § 206, subd. 72; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x71; R.S. 1933 & C. 1943, 15-8-68.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 14 Am. Jur. 2d Census § 5.

C.J.S. — 14 C.J.S. Census § 2.

Key Numbers. — Census ⇐ 9.

10-8-69. Annoying pastimes in streets.

They may prohibit or regulate the rolling of hoops, playing of ball, flying of kites, riding of bicycles or tricycles, or any other amusements or practices having a tendency to annoy persons passing in the streets or on sidewalks, or to frighten teams or horses, or to interfere with traffic.

History: R.S. 1898 & C.L. 1907, § 206, subd. 74; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x73; R.S. 1933 & C. 1943, 15-8-69.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges § 251.

C.J.S. — 64 C.J.S. Municipal Corporations § 1772.

Key Numbers. — Municipal Corporations ⇐ 703.

10-8-70. Lumberyards and combustible materials.

They may regulate or prohibit the keeping of any lumberyard, and the placing or piling or selling of any lumber, timber, wood or other combustible material within the fire limits of the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 75; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x74; R.S. 1933 & C. 1943, 15-8-70.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 452.

C.J.S. — 62 C.J.S. Municipal Corporations § 257.

A.L.R. — Validity of municipal regulation of storage or accumulation of lumber, straw, trash, or similar inflammable material, 64 A.L.R.2d 1040.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-71. Waterworks — Police and fire signals — Retainage escrow.

(1) They may purchase, construct, lease, rent, manage and maintain any system or part of any system of waterworks, hydrants and supplies of water, telegraphic or other police or fire signals, and pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or constructed.

(2) If any payment on a contract with a private person, firm, or corporation to construct all or part of any waterworks system is retained or withheld, it shall be placed in an interest bearing account and the interest shall accrue for the benefit of the contractor and subcontractors to be paid after the project is completed and accepted by the board of commissioners or city council of the city, or by the board of trustees of the town. It is the responsibility of the contractor to ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

History: R.S. 1898 & C.L. 1907, § 206, subd. 76; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x75; R.S. 1933 & C. 1943, 15-8-71; L. 1983, ch. 60, § 7.

Amendment Notes. — The 1983 amendment added Subsection (2).

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 257.

A.L.R. — Power of municipal corporation to lease or sublet property owned or leased by it, 47 A.L.R.3d 19.

Key Numbers. — Municipal Corporations ⇐ 603.

10-8-72. Libraries and reading rooms — Establishment and maintenance.

They may establish, maintain and regulate free public libraries and reading rooms, as provided by law, and may perpetuate such free libraries and reading rooms as may have been heretofore established in the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 77; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x76; R.S. 1933 & C. 1943, 15-8-72.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — City libraries, § 37-2-1 et seq.

Report to state director of libraries, § 37-4-8.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 679.

Key Numbers. — Municipal Corporations ⇐ 213.

10-8-73. Processions and demonstrations.

They may regulate or prohibit all public demonstrations and processions which interfere with public traffic or tend to cause disorder.

History: R.S. 1898 & C.L. 1907, § 206, subd. 78; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x77; R.S. 1933 & C. 1943, 15-8-73.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges §§ 247 to 249.

C.J.S. — 62 C.J.S. Municipal Corporations § 134; 64 C.J.S. Municipal Corporations § 1769.

A.L.R. — Vagueness as invalidating statutes and ordinances dealing with disorderly persons or conduct, 12 A.L.R.3d 1448.

Students: participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or similar offense, 32 A.L.R.3d 551.

Key Numbers. — Municipal Corporations ⇐ 596, 703(2).

10-8-74. Burial of indigents.

They may provide for the burial of the indigent dead and pay the expenses thereof.

History: R.S. 1898 & C.L. 1907, § 206, subd. 79; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x78; R.S. 1933 & C. 1943, 15-8-74.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Concurrent jurisdiction with counties in care of indigents, § 17-5-55.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 270.

Key Numbers. — Municipal Corporations ⇐ 609.

10-8-75. Destitute children.

They may authorize the taking, and provide for the safekeeping and education for such periods of time as may be expedient, for all children who are destitute of proper parental care.

History: R.S. 1898 & C.L. 1907, § 206, subd. 80; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x79; R.S. 1933 & C. 1943, 15-8-75.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Detention schools, § 55-11-7.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 132.

Key Numbers. — Municipal Corporations ⇐ 595.

10-8-76. Noise abatement — Street performances.

They may prevent the ringing of bells, blowing of horns and bugles, crying of goods by auctioneers and others, and the making of other noises, for the purpose of business, amusement or otherwise, and prevent all performances and devices tending to the collection of persons on the streets or sidewalks of the city.

History: R.S. 1898 & C.L. 1907, § 206, subd. 83; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x82; R.S. 1933 & C. 1943, 15-8-76.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d Highways, Streets, and Bridges § 253; 56 Am. Jur. 2d Municipal Corporations, Etc. §§ 470, 482.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 134, 299; 64 C.J.S. Municipal Corporations §§ 1770, 1771.

Key Numbers. — Municipal Corporations ⇐ 596, 611, 703.

10-8-77. Untied animals in streets.

They may compel persons to fasten animals attached to vehicles standing or remaining in the street.

History: R.S. 1898 & C.L. 1907, § 206, subd. 84; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x83; R.S. 1933 & C. 1943, 15-8-77.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

C.J.S. — 62 C.J.S. Municipal Corporations § 213.

A.L.R. — Construction and application of ordinances relating to unrestrained dogs, cats, or other domesticated animals, 1 A.L.R.4th 994.

Key Numbers. — Municipal Corporations ⇐ 604.

10-8-78. Official bonds and reports.

They may require all municipal officers and agents, elected or appointed, to give bond and security for the faithful performance of their duties, and require from every officer of the city at any time a report in detail of all transactions in his office or any matters connected therewith.

History: R.S. 1898 & C.L. 1907, § 206, subd. 85; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x84; R.S. 1933 & C. 1943, 15-8-78.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Constitutional oath, Utah Const., Art. IV, Sec. 10.

Official oaths and bonds, § 52-1-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 63 Am. Jur. 2d Public Officers and Employees § 414 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations § 491.

Key Numbers. — Municipal Corporations ⇐ 145.

10-8-79. Creating offices — Filling vacancies.

They may create any office they may deem necessary for the good government of the city, and provide for filling vacancies in elective and appointive offices, and prescribe the powers, duties and compensation of all officers of the city, except as otherwise provided by law.

History: R.S. 1898 & C.L. 1907, § 206, subd. 86; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x85; R.S. 1933 & C. 1943, 15-8-79.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 237.

C.J.S. — 62 C.J.S. Municipal Corporations § 466.

Key Numbers. — Municipal Corporations ⇐ 126.

10-8-80. License fees and taxes.

They may raise revenue by levying and collecting a license fee or tax on any business within the limits of the city, and regulate the same by ordinance; provided, that no Utah city or town shall collect a license fee or tax hereunder from any solicitor or salesman who solicits, obtains orders for or sells goods in such city or town solely for resale; and no enumeration of powers of cities

contained in this chapter, shall be deemed to limit or restrict the general grant of authority hereby conferred. All such license fees and taxes shall be uniform in respect to the class upon which they are imposed.

History: R.S. 1898 & C.L. 1907, § 206, subd. 87; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x86; R.S. 1933, 15-8-80; L. 1935, ch. 24, § 1; C. 1943, 15-8-80.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Insurance companies, fee or tax prohibited, § 31A-3-102.

License of businesses generally, § 10-8-39.

NOTES TO DECISIONS

Analysis

Businesses subject to licensing fees.

— "Business" construed.

The term "business" is synonymous with calling, occupation or trade, and is defined as any particular occupation or employment habitually engaged in for a livelihood or gain. Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931).

— Card games.

This section, when read in connection with § 10-8-39, does not authorize a city to levy a license fee on one maintaining a room open to the public where games of cards are played, because that is not such a business as is embraced or included within § 10-8-39. Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931) (decided prior to 1935 amendment).

— Construction with § 10-8-39.

This section must be read in connection with § 10-8-39 defining kind of business on which license fee may be imposed. In other words, the two sections must be considered and construed together. Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931) (decided prior to 1935 amendment).

The 1935 amendment to this section granted cities the power to levy and collect a license fee or tax on businesses other than those specifically enumerated in other sections of this chapter. Davis v. Ogden City, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208, rehearing denied, 118 Utah 401, 223 P.2d 412 (1950).

— Lawyers.

Under the former statute, cities had no power to exact a license fee from lawyers. Ogden City v. Boreman, 20 Utah 98, 57 P. 843 (1899); Morgan v. Salt Lake City, 78 Utah 403, 3 P.2d 510 (1931).

Ordinance requiring any person engaging in business within the corporate limits of a city to obtain a "business license," the license fee to be graduated according to gross receipts of the business, was valid with respect to its application to attorneys, under powers granted to municipalities by this section. Davis v. Ogden City, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208, rehearing denied, 118 Utah 401, 223 P.2d 412 (1950).

Under this section, city had power to impose business license fee upon attorneys, notwithstanding the fact that the city had no power to regulate the practice of law. Davis v. Ogden City, 117 Utah 315, 215 P.2d 616, 16 A.L.R.2d 1208, rehearing denied, 118 Utah 401, 223 P.2d 412 (1950).

— Light and power companies.

Ordinance imposing a license or occupation tax upon corporations engaged in generating and selling electricity and "using meters" is invalid as obnoxious to Utah Const., Art. I, Sec. 24. Salt Lake City v. Utah Light & Ry. 45 Utah 50, 142 P. 1067 (1914).

— Meat dealers.

This section, when read in connection with other sections of this chapter, empowers city to exact a license of one engaged in selling meat at wholesale and retail. Provo City v. Provo Meat & Packing Co., 49 Utah 528, 165 P. 477, 1918D Ann. Cas. 530 (1917).

— Private telephone systems.

Under Constitution, as it read originally, and former statutes, city had power to levy and collect, for revenue purposes, a reasonable license fee for each telephone instrument operated and maintained by any person or corporation, used exclusively within the city limits for local business, and for which a rental or a charge was made. Ogden City v. Crossman, 17 Utah 66, 53 P. 985 (1898).

Uniformity and equality of taxes and fees.

Constitutional provision which imposes equality and uniformity of taxation has no application to an occupation or license tax, but is limited to a direct property tax which is assessed and collected in a usual way. Salt Lake City v. Christensen Co., 34 Utah 38, 95 P. 523, 17 L.R.A. (n.s.) 898 (1908).

Ordinance imposing graduated license tax was valid. Lake City v. Christensen Co., 34 Utah 38, 95 P. 523, 17 L.R.A. (n.s.) 898 (1908).

While cities may impose license or occupation taxers, and for that purpose make reasonable classifications, it is essential to the constitutionality of those taxing ordinances that the tax apply equally to all persons of a given class and be uniform and equal. Thus, discriminations between peddlers engaged in the same business will render the ordinance void. Park City v. Daniels, 46 Utah 554, 149 P. 1094, 1918E Ann. Cas. 107 (1915).

A license tax imposed on an intracity bus service with fixed fares, routes, and schedule did not lack uniformity even though it was not applicable to sightseeing buses, taxicabs, and intercity buses. Salt Lake City Lines v. Salt Lake City, 6 Utah 2d 428, 315 P.2d 859 (1957).

Where the basic flat-fee charge for a building permit was increased in one jump from $12.00 to $112.00, which increase admittedly had no relationship to the increased costs of the service rendered, and where the declared purpose was to raise general revenue for the city, the increase placed a disproportionate and unfair burden on new households as compared to old ones in the maintenance of city governments and constituted an impermissible discrimination. Weber Basin Home Bldrs. Ass'n v. Roy City, 26 Utah 2d 215, 487 P.2d 866 (1971).

COLLATERAL REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d Licenses and Permits § 91 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 168, 229 et seq.

Key Numbers. — Municipal Corporations ⇐ 621(1).

10-8-81. Social clubs and athletic associations.

They may regulate all social clubs, recreational associations, athletic associations and kindred associations, whether incorporated or not, which maintain club rooms or regular meeting rooms within the corporate limits of the city.

History: C.L. 1917, § 570x88, added by L. 1925, ch. 113, § 1; R.S. 1933 & C. 1943, 15-8-81.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Clubs allowing consumption of liquor on premises, § 11-10-1 et seq.

NOTES TO DECISIONS

ANALYSIS

Billiards and pool.
Conflict with state authority.
Multiple licenses.

Billiards and pool.

This section does not go further than the regulation of clubs; it does not, even when read in connection with 10-8-40 and 10-8-84, empower city council to enact ordinance prohibiting any person from playing billiards or pool in any clubroom. American Fork City v. Robinson, 77 Utah 168, 292 P. 249 (1930).

Conflict with state authority.

Ordinance regulating and licensing nonprofit clubs or associations, which established same requirements for license as state did for charter and same terms for revocation of license as state law provided for revocation of charter, was unconstitutional as encroaching upon jurisidiction of secretary of state. State v. Salt Lake City, 21 Utah 2d 318, 445 P.2d 691 (1968).

Multiple licenses.

City cannot fragment the power delegated by this section by requiring a license for each of any number of activities a club may pursue; thus, an ordinance imposing a license fee only upon the restaurant activities of a club was void since the restaurant activity was merely one of many activities in which the club engaged. Salt Lake City v. Towne House Athletic Club, 18 Utah 2d 417, 424 P.2d 442 (1967).

COLLATERAL REFERENCES

Am. Jur. 2d. — 6 Am. Jur. 2d Associations and Clubs § 4.

C.J.S. — 14 C.J.S. Clubs § 3.

Key Numbers. — Clubs ⇐ 2.

10-8-82. Railroads — Removal of tracks declared to be nuisance.

They may require the tracks of any railroad or street railway company to be taken up and removed which shall have been laid upon the streets or highways of the city, and which remain in the streets or highways contrary to the terms of the franchise of the company, or which are declared by the governing body a nuisance, or which such company has failed to operate for a period of nine months prior to the time when such nuisance shall be declared, and shall have the power to declare any of acts specified in this section a nuisance.

History: L. 1899, ch. 27, § 1; C.L. 1907, § 206x; C.L. 1917, § 573; R.S. 1933 & C. 1943, 15-8-82.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Nonuse as grounds for removal of tracks, § 10-8-34.

COLLATERAL REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d Railroads § 276 et seq.

C.J.S. — 74 C.J.S. Railroads § 118; 83 C.J.S. Street Railroads § 109.

Key Numbers. — Railroads ⇐ 82(1); Street Railroads ⇐ 40.

10-8-83. Railroad gates — Kind and quality — Installation.

They may require any railroad or street railway company to place gates at any place along its tracks, and may designate the places where such gates shall be placed, and the nature, kind and quality of such gates.

History: L. 1899, ch. 27, § 2; C.L. 1907, § 206x1; C.L. 1917, § 574; R.S. 1933 & C. 1943, 15-8-83.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — Fencing railroads, construction of cattle guards and street crossings, § 10-8-35.

COLLATERAL REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d Railroads § 139.

C.J.S. — 74 C.J.S. Railroads § 177.

Key Numbers. — Railroads ⇐ 103(1).

10-8-84. Ordinances, rules and regulations — Passage — Penalties.

They may pass all ordinances and rules, an make all regulations, not repugnant to law, necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city; and may enforce obedience to the ordinances with fines or penalties as they may deem proper, but the punishment of any offense shall be by fine not to exceed the maximum class B misdemeanor fine under § 76-3-301 or by imprisonment not to exceed six months, or by both the fine and imprisonment.

History: R.S. 1898 & C.L. 1907, § 206, subd. 87; L. 1911, ch. 120, § 1; 1915, ch. 100, § 1; C.L. 1917, § 570x87; R.S. 1933 & C. 1943, 15-8-84; L. 1981, ch. 56, § 2; 1986, ch. 178, § 6.

Amendment Notes. — The 1981 amendment substituted "not to exceed $299" for "less than $300."

The 1986 amendment substituted "the maximum class B misdemeanor fine under § 76-3-301" for "$299" and made minor phraseology and punctuation changes throughout the section.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

Cross-References. — City courts, jurisdiction, § 78-4-1 et seq.

Justice of peace, cities and towns, jurisdiction, Utah Const., Art. VIII, § 8; Sec. 78-5-5.

NOTES TO DECISIONS

ANALYSIS

— Objectionable businesses.
— Parking ordinances.
— Price advertising.
— Prostitution.
— Restaurants and eating houses.
— Sand and gravel operations.
— Sewer connections.
— Subdivision plats.
— Sunday closings.
— Utility rates.
— Water rights.
Penalties.
Repeal or amendment of ordinances.

Enforcement.

— Injunction against enforcement.

A taxpayer was entitled to sue to enjoin the enforcement of a city ordinance regulating its relations with a water company whereby the city bound itself to pay unreasonable rates. Brummitt v. Ogden Waterworks Co., 33 Utah 285, 93 P. 828 (1908).

Taxpayers could not enjoin enforcement of ordinance on ground that granting of a 50-year privilege to a water company to furnish water for the city constituted a monopoly, since the claim that the city granted exclusive rights to the company was one that did not directly and presently affect taxpayers. Brummitt v. Ogden Waterworks Co., 33 Utah 285, 93 P. 828 (1908).

— Nature of proceeding.

Proceeding based upon information charging a saloon keeper with the selling of intoxicating liquor after hours prescribed in city ordinance was criminal, and rules pertaining to criminal prosecutions for misdemeanors were applicable. Salt Lake City v. Robinson, 39 Utah 260, 116 P. 442, 35 L.R.A. (n.s.) 610, 1913E Ann. Cas. 61 (1911).

Extent of regulatory powers.

— Express powers.

This section is merely in aid of the express powers elsewhere granted. American Fork City v. Robinson, 77 Utah 168, 292 P. 249 (1930).

Extent of regulatory powers.

— Express powers.

The general power conferred upon the cities in this section is qualified and restricted by those other clauses and provisions of the charter or the general law which specify particular purposes for which ordinances may be passed. Lark v. Whitehead, 28 Utah 2d 343, 502 P.2d 557 (1972).

— Special grants.

This section, frequently referred to as the "General Welfare Clause," does not enlarge or annul the powers conferred upon the city by special grant. Bohn v. Salt Lake City, 79 Utah 121, 8 P.2d 591, 81 A.L.R. 215 (1932).

— State and federal law.

Legislature could confer police powers upon municipalities over subjects within existing state laws, and authorize them to prohibit and punish, by ordinance, acts which were also prohibited and punishable as misdemeanors under general statutes of the state. Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

Under this section, boards of commissioners and city councils may prohibit and punish acts prohibited and punished by state laws, and may impose the same penalties imposed by state laws if within municipal court jurisdiction. American Fork City v. Charlier, 43 Utah 231, 134 P. 739 (1913); American Fork City v. Briggs, 43 Utah 252, 134 P. 747 (1913).

A city's power to enact ordinances is not only subject to the paramount legislative authority of the state legislature, but must not infringe limitations, restrictions and prohibitions contained in the State and Federal Constitutions. Bountiful City v. De Luca, 77 Utah 107, 292 P. 194, 72 A.L.R. 657 (1930).

City ordinance prescribing a greater penalty for trespass than was provided in the state criminal code was invalid; city had only such powers as were specifically delegated to it, and could legislate only insofar as its enactments were not repugnant to the general law. Allgood v. Larson, 545 P.2d 530 (Utah 1976).

— Strict construction.

Grants of power to cities are strictly construed to the exclusion of implied powers not reasonably necessary in carrying out the purposes of the express powers granted. Nasfell v. Ogden City, 122 Utah 344, 249 P.2d 507 (1952).

Form of ordinances.

Where there is no constitutional or statutory requirement, a municipal ordinance need not contain a title fully expressing its subject matter. Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

Imprisonment.

— Juveniles.

City court had jurisdiction to try and sentence minor to jail for drunk driving in violation of city ordinance even though place of detention was not one exclusively for juveniles. Nelson v. Green, 25 Utah 2d 219, 479 P.2d 480 (1971).

Particular subjects of ordinances.

— Amusements.

An ordinance prohibiting the use, for any purpose, of bagatelle, pinball, and marble machines is not authorized under this section or § 10-8-40. Stevenson v. Salt Lake City Corp., 7 Utah 2d 28, 317 P.2d 597 (1957).

— Assault and battery.

Such a general welfare clause as this section does not authorize a city to pass an ordinance defining and punishing assaults and batteries. People v. Brown, 2 Utah 462 (1877).

— Barbershops.

Under this section, an ordinance fixing the hours of business for barbershops is invalid as an invalid exercise of the police power. Salt Lake City v. Revene, 101 Utah 504, 124 P.2d 537 (1942).

— Controlled substances.

Cities do not have the authority to enact ordinances that are a copy of a state statute controlling the sale, gift, or use of controlled substances. Layton City v. Speth, 578 P.2d 828 (Utah 1978).

— Drunken driving.

Cities have the power to pass ordinances prohibiting driving while intoxicated, notwithstanding other state statutes on the subject. Salt Lake City v. Kusse, 97 Utah 113, 93 P.2d 671 (1938).

Municipalities have the authority pursuant to their general police power to enact ordinances prohibiting driving under the influence of alcohol; this general authority is supplemented by § 41-6-16 which allows municipalities to enact rules and regulations consistent with the Traffic Rules and Regulations Act. Layton City v. Glines, 616 P.2d 588 (Utah 1980).

— Evidentiary rules.

Power to pass ordinances establishing rules of evidence binding on the courts is not granted to cities in express words, nor can it be fairly implied from, nor is it incident to, the powers expressly given, nor is it essential to the accomplishment of the objects and purposes of the powers granted. Nasfell v. Ogden City, 122 Utah 344, 249 P.2d 507 (1952).

— Garbage collection and disposal.

Ordinance providing particular means for collection and disposal of garbage was not discriminatory or arbitrary. Salt Lake City v. Bernhagen, 56 Utah 159, 189 P. 583 (1911).

— Gasoline filling and service stations.

Ordinance prohibiting operation of gasoline service stations in certain district unless certain percentage of property owners consented was unconstitutional. Smith v. Barrett, 81 Utah 522, 20 P.2d 864 (1933).

— Massage parlor.

City had authority to enact ordinance prohibiting massages by members of the opposite sex, with certain exceptions, and prohibiting a masseur from touching or offering to touch or massage the genitalia of customers; and the ordinance was not pre-empted by state laws concerning prostitution and sex offenses. Hollingsworth v. City of South Salt Lake, 624 P.2d 1149 (Utah 1981).

— Milk.

Municipality could by ordinance provide for the inspection of milk and regulate the sale of it by requiring a permit to be obtained by persons selling it within city. Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

Ordinance regulating the sale of milk and requiring that a permit be obtained by persons selling it within the city was not in conflict with former § 4-20-1, which regulated production, manufacture and sale of food and dairy products, since the statute did not punish the same acts as the ordinance. Salt Lake City v. Howe, 37 Utah 170, 106 P. 705, 1912C Ann. Cas. 189 (1910).

— Objectionable businesses.

City had right to exclude from its corporate limits foundries and other objectionable businesses; thus, ordinance creating residence district and making it unlawful to erect or maintain foundry within district was valid. Salt Lake City v. Western Foundry & Stove Repair Works, 55 Utah 447, 187 P. 829 (1920).

— Parking ordinances.

A city has no power to pass an ordinance declaring owners of vehicles prima facie responsible for the illegal parking of their vehicles. Nasfell v. Ogden City, 122 Utah 344, 249 P.2d 507 (1952).

— Price advertising.

Ordinance which prohibited price advertising of eyeglasses was a limitation on rights guaranteed in Sec. 1 of Art. I of the Utah Constitution and since it did not have any basis of relationship to public health was invalid. Ritholz v. City of Salt Lake, 3 Utah 2d 385, 284 P.2d 702 (1955).

— Prostitution.

Part of this section conferring power upon

cities to "improve the morals" authorized a city to enact an ordinance making it a crime to aid and abet in the commission of prostitution; since the ordinance bore a reasonable relationship to the preservation and protection of public morals by enacting comprehensive laws pertaining to sexual offenses, state had not so preempted field that city had no authority to enact such an ordinance. Salt Lake City v. Allred, 20 Utah 2d 298, 437 P.2d 434 (1968).

— Restaurants and eating houses.

Cities have the power to pass reasonable ordinances regulating restaurants and eating houses. Ogden City v. Leo, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

Ordinance prohibiting maintenance of booths of certain dimensions in restaurants so as to prevent persons of both sexes having no regard for law or good morals from meeting in such places was reasonable. Ogden City v. Leo, 54 Utah 556, 182 P. 530, 5 A.L.R. 960 (1919).

— Sand and gravel operations.

Safety ordinance directed at sand and gravel operation, enacted under authority of this section, was unreasonable and hence unenforceable as applied to facts of case upon evidence: (1) there was no possible menace against which specific provisions of ordinance would protect, (2) that requirements restricting excavation to areas 200 feet from boundaries without regard to the ownership of the adjoining land was unreasonable, (3) that maps with five-foot contours required to be furnished by landowner were costly and more prohibitory than regulatory, (4) that it would have been impossible for landowner to submit detailed rehabilitation plans, (5) that ordinance conferred too broad a discretionary power upon enforcing agencies, and (6) that ordinance was not enforced equally. Gibbons & Reed Co. v. North Salt Lake City, 19 Utah 2d 329, 431 P.2d 559 (1967).

— Sewer connections.

Ordinance requiring connection with new municipal sewer system and payment of connection fee was a valid exercise of the police power. Rupp v. Grantsville City, 610 P.2d 338 (Utah 1980).

City did not have authority to enact an ordinance requiring mandatory sewer connections of all buildings located on property within 500 feet of an existing sewer line, since § 10-8-38 limits a city's authority to require mandatory sewer connections to those buildings located on property within 300 feet of an existing sewer line. Harding v. Alpine City, 656 P.2d 985 (Utah 1982).

— Subdivision plats.

A city ordinance requiring subdividers to dedicate 7 percent of the subdivided land to the city, or pay the equivalent of that value in cash for flood control and/or parks and recreation facilities was within the scope of authority and responsibility of the city government in the promotion of the health, safety, morals and general welfare of the community. Call v. City of West Jordan, 606 P.2d 217 (Utah 1979).

— Sunday closings.

Power granted to municipalities by this section is sufficiently comprehensive to grant them the authority to pass Sunday closing ordinances. Gronlund v. Salt Lake City, 113 Utah 284, 194 P.2d 464 (1948).

Sunday closing ordinance of Salt Lake City having reference only to mercantile pursuits, indirectly limiting those pursuits by preventing the sale on Sunday of all commodities with specified exceptions including food eaten on premises; fruits and vegetables on premises where produced; drugs, medicines and surgical appliances; fresh milk; ice cream and soda fountain dispensations; candy and confections; bottled soft drinks; bread and bakery products; ice; gasoline and oil; tobacco and cigars; dentifrices and toiletries; newspapers and magazines; sporting equipment; beer; nursery products; and parts and equipment for motor vehicles necessary to be installed for repair purposes, was invalid as bearing no reasonable relationship to objects to be accomplished by enactment pursuant to this section, and as violative of constitutional guaranties against unreasonable discrimination. (Rev. Ord. Salt Lake City 1944, § 4862.) Gronlund v. Salt Lake City, 113 Utah 284, 194 P.2d 464 (1948).

— Utility rates.

Provision of a city ordinance regulating relations between the city and a water company which fixed rates for the entire period of their contract could not be upheld, but city council could fix temporary rates. Brummitt v. Ogden Waterworks Co., 33 Utah 285, 93 P. 828 (1908).

— Water rights.

Under this section, a city may acquire the right to the waters of a creek and springs by appropriation and use or other reasonable and lawful ways. Springville v. Fullmer, 7 Utah 450, 27 P. 577 (1891).

Penalties.

City may impose both maximum and minimum penalties within limits authorized by proviso of this section. American Fork City v. Charlier, 43 Utah 231, 134 P. 739 (1913); American Fork City v. Briggs, 43 Utah 252, 134 P. 747 (1913).

Ordinance making sale of liquor misdemeanor was not invalid as discriminatory on ground that it applied only to natural persons, and contained no provision punishing corporations violating the law, where corporation's agents were punishable under ordinance and

corporation was subject to more severe sanctions under state law. American Fork City v. Charlier, 43 Utah 231, 134 P. 739 (1913); American Fork City v. Briggs, 43 Utah 252, 134 P. 747 (1913).

When ordinance prescribes punishment in city jail, it is unauthorized and beyond court's jurisdiction to commit accused to county jail. Frankey v. Patten, 75 Utah 231, 284 P. 318 (1929).

Repeal or amendment of ordinances.

Where an ordinance is necessary to confer authority to do a certain act or impose a certain tax, either general or special, such an ordinance can only be changed, amended, or repealed by the adoption of another ordinance, which must be done with same legal formalities as initially required. If this is not done, the original remains in force. Williams v. Summit County, 41 Utah 72, 123 P. 938 (1912).

COLLATERAL REFERENCES

Utah Law Review. — State Preemption and the Exercise of Municipal General Welfare Powers: A City's Anti-Prostitution Ordinance, 1968 Utah L. Rev. 419.

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 343 et seq.

C.J.S. — 62 C.J.S. Municipal Corporations §§ 163, 351, 412.

Key Numbers. — Municipal Corporations ⇐ 105, 594(2), 633, 643.

10-8-85. Prison labor and fines.

They may provide by ordinance that any person committed to the county or municipal jail or other place of incarceration as a punishment or in default of the payment of a fine, or fine and costs, shall be required to work for the city at such labor as his strength will permit not exceeding eight hours in each working day; and that a judgment that the defendant pay a fine or a fine and costs may also direct that he be imprisoned until the amount thereof is satisfied, specifying the extent of imprisonment which cannot exceed one day for each $2 of such amount.

History: R.S. 1898 & C.L. 1907, § 211; C.L. 1917, § 588; R.S. 1933 & C. 1943, 15-8-85.

Compiler's Notes. — "They," as used at the beginning of this section, refers to boards of commissioners and city councils of cities. See § 10-8-1.

NOTES TO DECISIONS

Imprisonment to pay fine.

While a person cannot be imprisoned for the violation of a nuisance ordinance, imprisonment to enforce the collection of a fine for such nuisance is proper. Ex parte Smith, 97 Utah 280, 92 P.2d 1098 (1939).

Nuisance ordinance providing for imprisonment to pay off fine at rate of $1 a day violated this section; therefore, sentence imposed under such ordinance was invalid notwithstanding that justice of peace imposed the imprisonment at the rate of $2 per day. Ex parte Smith, 97 Utah 280, 92 P.2d 1098 (1939).

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 414.

C.J.S. — 62 C.J.S. Municipal Corporations § 355.

A.L.R. — Indigency of offenders as affecting validity of imprisonment as alternative to payment of fine, 31 A.L.R.3d 926.

Key Numbers. — Municipal Corporations ⇐ 643.

ARTICLE 2

PUBLIC TRANSPORTATION

10-8-86. Organization, operation, and maintenance of public transportation system authorized.

(1) Notwithstanding the provisions of Section [Subsection] 11-9-4(2) or 11-9-6(2) to the contrary, the governing body of any municipality may adopt a resolution allowing the municipality to organize, operate, and maintain a public transportation system within such municipality and to impose a sales and a use tax of 1/4 of 1% to fund the system; provided the resolution is, or has been, approved by the voters of the municipality in conformance with the requirements of §§ 11-9-4 and 11-9-6.

(2) The authority granted municipalities by this section to organize, operate, and maintain a public transportation system is inapplicable to a municipality located in or within five highway or roadway miles of the boundary of an existing transit district, unless the existing transit district consents to the organization and operation of such a system by the municipality.

History: C. 1953, 10-8-86, enacted by L. 1981, ch. 53, § 1.

Compiler's Notes. — For repeal of the former section, see the repeal note following repealed §§ 10-8-87 and 10-8-88.

10-8-87, 10-8-88. Repealed.

Repeal. — These sections and former § 10-8-86 (R.S. 1898 & C.L. 1907, §§ 252 to 254; L. 1915, ch. 111, § 1; C.L. 1917, §§ 670 to 672; L. 1919, ch. 13, § 1; 1921, ch. 14, § 1; 1929, ch. 66, § 1; R.S. 1933, 15-8-86 to 15-8-88; L. 1935, ch. 25, § 1; C. 1943, 15-8-86 to 15-8-88), relating to fiscal year and general taxes, were repealed by Laws 1961, ch. 24, § 2. For new comparable provisions, see §§ 10-10-26, 10-10-57, 10-10-58.

ARTICLE 3

CHANGE OF GRADE OF STREETS

10-8-89. Damage to abutting property — Liability of city for.

Whenever by the grading of any street, alley or other public ground in a city; pursuant to the action of the city authorities in changing the established grade of such street, alley or public ground, after valuable improvements have been made upon real property abutting thereon such real property is injured or diminished in value, the owner of such real property or improvements may recover from such city the amount of such damages or diminution in value in a civil action brought for that purpose.

History: R.S. 1898 & C.L. 1907, § 282; C.L. 1917, § 700; R.S. 1933 & C. 1943, 15-8-108.

Cross-References. — Power to change grade, § 10-8-34.

NOTES TO DECISIONS

ANALYSIS

Contractor/city joint liability.
Initial grading damage.
Measure of damages.
Removal of trees.
Rights of subsequent purchasers.
Source of right of recovery.

Contractor/city joint liability.

City and independent contractor were liable for injuries sustained as result of trees falling on abutting owner's house due to the negligent and unnecessary cutting of roots in the constructing of a sidewalk. Morris v. Salt Lake City, 35 Utah 474, 101 P. 373 (1909).

Initial grading damage.

If by establishing a first or initial grade and by excavating or raising a street and sidewalk in conformity therewith, abutting property is damaged, the owner must be compensated therefor the same as though the damage was occasioned due to a changed or re-established grade. Richards v. Salt Lake City, 49 Utah 28, 161 P. 680 (1916).

Measure of damages.

In suit by an abutting owner to recover consequential damages to his real property caused by a change in a street grade by a city, the measure of damages was the difference in the market value of the property at the date of the commencement of the work and the date of its completion, less direct benefits plus interest on the damages. Kimball v. Salt Lake City, 32 Utah 253, 90 P. 395, 10 L.R.A. (n.s.) 483, 125 Am. St. R. 859 (1907).

Abutting owner was entitled to recover consequential damages to his real property caused by public improvements made by a city in changing the street grade in front of the plaintiff's property. Kimball v. Salt Lake City, 32 Utah 253, 90 P. 395, 10 L.R.A. (n.s.) 483, 125 Am. St. R. 859 (1907); Hempstead v. Salt Lake City, 32 Utah 261, 90 P. 397 (1907).

Removal of trees.

City was not liable for diminution in value of abutting property caused by removal of trees growing in street. Webber v. Salt Lake City, 40 Utah 221, 120 P. 503, 37 L.R.A. (n.s.) 1115 (1911).

Rights of subsequent purchasers.

Where plaintiff purchased and improved lot after street grade had been established and after major portion thereof had been lowered approximately to the established grade, except the space for sidewalk which had been left in its natural state and was considerably higher than the portion of the street which had been brought to grade, plaintiff could not recover from the city for the damage to the property by bringing the sidewalk to the established grade. Coalter v. Salt Lake City, 40 Utah 293, 120 P. 851 (1912); Gray v. Salt Lake City, 44 Utah 204, 138 P. 1177, 1916D Ann. Cas. 1135 (1914).

Source of right of recovery.

Right of an abutting owner to recover damages resulting from the change of a street grade is given by Utah Const. Art. I, § 22, providing that private property shall not be damaged for public use without compensation, and not by this section. Webber v. Salt Lake City, 40 Utah 221, 120 P. 503, 37 L.R.A. (n.s.) 1115 (1911).

COLLATERAL REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d Eminent Domain § 228; 39 Am. Jur. 2d Highways, Streets, and Bridges § 56.

C.J.S. — 29A C.J.S. Eminent Domain § 124; 63 C.J.S. Municipal Corporations § 1046.

A.L.R. — Use or improvement of highway as establishig grade necessary to entitle abutting owner to compensation on subsequent change, 2 A.L.R.3d 985.

Key Numbers. — Eminent Domain ⇐ 101(1); Municipal Corporations ⇐ 656.

ARTICLE 4

HOSPITALS IN CITIES OF THIRD CLASS AND TOWNS

10-8-90. Ownership and operation of hospitals.

Cities of the third class and towns of the state of Utah are hereby authorized to construct, own and operate hospitals and to join with other cities, towns and counties in the construction, ownership and operation of hospitals.

History: L. 1945, ch. 112, § 1; C. 1943, Supp., 15-8-109.

Cross-References. — Authority of county commissioners to join with cities and towns in construction, ownership and operation of hospitals, § 17-5-45.

Health Facility Licensure and Inspection Act, § 26-21-1 et seq.

Health Planning and Resources Development Act, § 26-33-1 et seq.

Pro-competitive Certificate of Need Act, § 26-22-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d Municipal Corporations, Etc. § 544.

C.J.S. — 41 C.J.S. Hospitals § 4.

Key Numbers. — Hospitals ⇐ 2.

10-8-91. Levy of tax by cities of the third class and towns.

Cities of the third class and towns of the state are authorized to levy a tax not exceeding .001 valuation for the purposes above-mentioned.

History: L. 1945, ch. 112, § 2; C. 1943, Supp., 15-8-110; L. 1985, ch. 165, § 10.

Amendment Notes. — The 1985 amendment deleted "of Utah" and "hereby"; and substituted ".001 valuation" for "five mills on the dollar valuation."

COLLATERAL REFERENCES

C.J.S. — 41 C.J.S. Hospitals § 4.

Key Numbers. — Hospitals ⇐ 2.

10-8-92. Joint board — Membership — Powers.

When two or more political subdivisions of the state of Utah join together under this act for the purposes set forth herein, there shall be set up by the political subdivisions so joining, a joint board whose membership shall have equal representation from each of the political subdivisions joining, and which said board shall be empowered with the administration, operation, construction and maintenance of said joint hospital.

History: L. 1945, ch. 112, § 3, enacted by L. 1949, ch. 84, § 1; C. 1943, Supp., 15-8-111.

Meaning of "this act". — The phrase "this act" appearing in this section apparently refers to L. 1945, ch. 112, which enacted this section and §§ 10-8-91 and 10-8-93.

Cross-References. — Authority of county commissioners to join with cities and towns in construction, ownership and operation of hospitals, § 17-5-45.

COLLATERAL REFERENCES

C.J.S. — 41 C.J.S. Hospitals § 4.
Key Numbers. — Hospitals ⇐ 2.

10-8-93. Control of funds and disbursements — Auditing of accounts by county auditor — Transfer of county tax funds to board to cover deficiencies.

The joint board created pursuant to this act shall have the custody and control of all funds collected in the joint operation of such hospital and the disbursement thereof; provided that the county auditor of any county participating under the provisions of this act shall audit the accounts of said board quarterly or at more frequent intervals, if public interest, in the judgment of such auditor requires a more frequent audit. The board of county commissioners of any county participating in the operation and maintenance of hospitals pursuant to this act may pay over to the joint board of such hospitals any funds yielded by a levy made pursuant to § 17-5-62 that may be required to cover any deficiencies incurred in the operation and maintenance of such hospital.

History: L. 1945, ch. 112, § 4, enacted by L. 1949, ch. 84, § 1; C. 1943, Supp., 15-8-112.
Meaning of "this act". — The phrase "this act" appearing in this section apparently refers to L. 1945, ch. 112, which enacted this section and §§ 10-8-91 and 10-8-92.

Cross-References. — Authority of county to join with cities and towns in construction, ownership and operation of hospitals, § 17-5-45.

COLLATERAL REFERENCES

C.J.S. — 41 C.J.S. Hospitals § 4.
Key Numbers. — Hospitals ⇐ 2.

10-8-94. Towns with same authority as cities.

Towns have the same powers and authority granted to cities under this chapter, in addition to other powers conferred by law, but subject to the following:

(1) The town council may enact ordinances providing for the public safety, health, morals, and welfare of the town which are not prohibited, preempted by, or inconsistent with, the policy of state or federal law or the constitution of Utah or the United States, or attempt to regulate an area which by the nature of the subject requires uniform state regulation.

(2) The town council: (a) may lay out, construct, open, and keep in repair canals, water ditches, or water pipes to conduct water for artificial light and power purposes, and construct, own, and operate artificial light and power plants; (b) may construct, own, and operate water pipes for irrigation, domestic, or other use for the inhabitants of the town; and (c) may annually assess and collect a special tax of not to exceed .0008 of assessed valuation upon all the property in the town for those purposes.

History: C. 1953, 10-8-94, enacted by L. 1985, ch. 109, § 2.

CHAPTER 9

ZONING, BUILDING AND PLANNING

Article 1

Zoning Power of Cities and Towns

Article 2

Municipal Planning Enabling Act